

William III. King and Mary II. Queen
of Great Britain and Ireland
CONSIDERATIONS

Humbly Offered for Taking the

Oath of Allegiance

TO

KING WILLIAM

AND

Queen Mary.

Optima Regula, qua nulla est verior, aut firmior in
Jure, Neminem oportet esse sapientiores legibus.

L O N D O N,

Printed by J. Leake, for Attonham Churchill, at the
Black Swan at Amen-Corner, MDC LXXXIX.

CONSIDERATIONS

OF THE

TO

KING WILLIAM

AND

QUEEN MARY.

By the Hon. John Russell, Esq. one of the
Secretaries of State.

LONDON.

Printed by J. Baskin, at the
Printers, in Pall Mall.

THE PREFACE.

Although I have insisted chiefly on the following Argument, because it seems most fully to take off that scandal from the Genuine Members of the Church of England, which others seem not so to have regarded as the importance of the matter doth require; yet do I by no means condemn those Writings which plead for taking the imposed Oath upon such Grounds as do more fully justify the Title of our present Governors; which as I never will dispute, so I conceive my self unable, by reason of my want of Knowledge in the Law, to pass an exact judgment in that matter.

But yet in matters which chiefly do relate to History, it may not be improper for one of my Profession to produce what He by reading of our Historians hath observed.

When by the Greatest Councils of our Nation an Original compact or establishment betwixt the King and People was asserted, few can be ignorant with what disdain the Notion was received, and how 'twas represented as an imaginary notion without foundation either in History or Law, or with what earnestness an evidence or prospect of such a contract was demanded: Now in order to the satisfaction of such Enquirers, be it observed,

I. That Florence of Worcester, Simeon of Durham, and R. Hoveden, do with one voice assert, That (a) William, called the Conqueror, made a League, or Com-

(a) Ubi Aldredus Archiepiscopus, Wulfstanus Wigornensis Episcopus, Clito, Eadgarus, comites Eadwinus & Morcarus, & de Lundonia quique Nobiliores, cum multis aliis ad eum venerunt, & datis obsidibus illi deditio-nem fecerunt, fidelitatemq; juraverunt, cum quibus & ipse foedus pepigit, &c. Flor. Wigorn. p. 635. Duncelm. p. 195. R. Hoved. Par. Pr. p. 258.

The PREFACE.

paſt with the Archbiſhop, Biſhops, Earls and Nobles of the Land who met him at Beorcham. To this it is indeed replied by Dr. Brady, That there was no Election, no Conſent of the People, no Bargain ſtrucken, or Covenant made to obſerve and keep the Laws, which were, *bonæ & approbata leges Regni*, the good and approved Laws of the Kingdom: but, on the contrary, here is the Submiſſion of the People, the Behaviour of a Conqueror, Hoſtages taken, Towns burnt, Rapine committed, and He himſelf made King by the influence of an Army. To which I Answer;

*Anſw. to Arg.
Antinorm. P.
251.*

(b) Ab omni-
bus tam Nor-
mannorum
quam Anglo-
rum proceri-
bus Rex eſt Electus.

1. That Gulielmus Gemicricenſis, and Waſſingham expreſſy ſay, That William the Conqueror was (b) Elected King by all the Nobles of England and Nor-
mahdy.

Gul. Gemicr. de ductu Norm. l. 6. c. 37. Waſſingb. Hypod. Neuſtria,

p. 436.

2. Florence of Worceſter, Simeon of Durham, R. Daniel. p. 36. Hoveden, and John Brompton declare, That as the Bi-
ſhops and Barons of the Realm ſwore Fealty to him,

(c) Cum qui-
bus ipſe ſœdus
pegigit, & ni-
hilominus ex-
ercitui ſuo vil-
las cremare, &
rapinas agere
permiſit---Ap-
propinquant
igitur Nativi-
tatis feſtivity-
te, cum omni exercitu Londoniam, ut ibi in Regem ſublimeretur, adiit---ipſa Nativitatis
die ab Aldredo Eboracenſium Archiepiſcopo in Weſtmonaſterio conſecratus eſt, honorifice
prius, ut idem Archipraſul ab eo exigebat, ante Altare Sancti Petri Apoſtoli, coram cle-
ro & populo, inſit jurando promittens, ſe velle Dei Sanctas Eccleſias ac Rectores illarum de-
fendere, nec non & cunctum populum ſibi ſubjectum juſte & Regali providentia regere,
rectam legem ſtatueri & tenere, rapinas, injuſtiq; judicia penitus interdicere. *Flor. Wi-*
gorn. p. 634, 635. Dunelm. p. 195. Hov. p. 258. Ipſum Regem W. ad jura Eccleſiæ Angli-
canæ tuenda & conſervanda, populumq; ſuum recte regendum, & leges rectas ſtatu-
endum, ſacramento ſolemniter adſtrinxit. *Chron. Joh. Brompt. p. 962.*

ſo He reciprocally (c) being required thereto by the Archbiſhop of York, made his Perſonal Oath before the Altar of St. Peter to defend the Holy Church of God, and the Rectors of the ſame; to govern the U-
niverſal People ſubject to him juſtly; to eſtabliſh e-
qual Law, or Laws, and to ſee them duly executed. And when new Commotions were made by the Nobility
and Clergy, upon their Submiſſion, and Oath of Alle-
giance

giance

The PREFACE

giance re-taken, He himself takes again his Personal Oath (d) before Archbishop *Lanfranc* and the Lords, (d) Occurre-
for the Good of Peace, NB. to observe the Ancient Angli memo-
Laws of the Realm established by his Noble Predecessor-rati---ubi post
for the Kings of *England*, and especially of *Edward* multas dece-
the Confessor. pteationes, præ-
sente Archie-

piscopo Lanfranco, Rex pro bono pacis juravit, tactis Sacrosanctis Evangeliiis, bonas & ap-
probatas antiquas Regni leges, quas sancti ac pii Angliæ Reges ejus Antecessores, & maxi-
me Rex *Edvardus* statuit, inviolabiliter observare; & sic pacificati ad propria læti recess-
serunt. *M. Paris in Vit. 23. Mon. p. 30.*

3. R. Hagulstadenfis, S. Dunelmenfis, R. Hove-
den, M. Paris, Henry of Knyghton, and W. of Mals-
bury inform us, That (e) Henry the First granted to (e) Legem R.
all the People the Laws of *Edward*, with the Emen- Edvardi vobis
dations which his Father had made of them, strength- reddo cum illis
ening them with his own Oath, and the Oath of all emendationi-
his Nobles, that they might not be eluded: And W. bus quibus Pa-
Lambard, in his Book of the Ancient Laws of England, ter meus eas e-
cites this as one of the Laws of William the Conqueror, mendavit con-
(f) This also we Command, That All men have and silio Baronum
keep the Law of King *Edward*, with the Additions we suorum. R. Ha-
have made to them for the benefit of the English-men. gustald. p. 311.
All which things plainly shew, in opposition to the Asser- Duncelm. p. 225.
tion of Dr. Brady, That there was an Election of Wil- 226. Hoveden.
liam the Conqueror, a bargain stricken between him part 1. p. 269.
and his Subjects, and that He did consent, covenant, and Mat. Paris, p.
swear to observe the good and approved Laws of the 38. Hear. de
Realm, and in particular those of King *Edward*. Knyght. p. 2374.
W. Malmshur.
l. 5. p. 88.

Edwardi Regis in omnibus rebus adauctis hiis quas constituimus ad utilitatem Anglo-
rum. *Apud Seid. Annut. ad Eadmer. p. 192.*

And whereas the same Dr. Brady saith, These Laws P. 252.
of King *Edward* were mostly penal, or else of small mo-
ment; our Forefathers were far from having such a
flight opinion of them: For,

The P R E F A C E.

(g) Sed postea ad preces communitatis Anglorum Rex adquevit, qui deprecati sunt quatenus permitteret sibi leges proprias & consuetudines Antiquas habere in quibus vixerant Patres eorum, & ipsi in eis nati & nutriti sunt; scilicet leges Sancti Edwardi. Et ex illo die magna Autoritate venerat, & per univ-
 sum Regnum corroboratæ & conservatæ sunt præ cæteris Regni legibus leges R. Edwardi. *Chron. Eccl. Lichfield apud Seld. ibid. p. 171.*

1. *The (g) Chronicle of Lichfield doth inform us, That the whole Community of England sued to the Conqueror that he would permit them to have the proper Laws and ancient Customs in which their Fathers had lived, and under which they were born and educated, viz. the Laws of St. Edward, and that the King consented to their Petition.*

(b) Interpellata est a civibus Londinensibus ut liceret eis uti legibus Sancti Edwardi & non legibus Patris sui H. quia graves erant, sed illa non adquevit; inde populus commotus illam capere Statuit. *Chron. Joh. Brompton. p. 1031. Chron. Gervas. p. 1355. Henr. de Knyght. p. 2387.*

2dly, *When they had fought for the Empress Maud against King Stephen, and placed her upon the Throne, they (b) requested her to Grant to them the Laws of King Edward; and upon her denial of that request, they again thrust her from the Throne, and forced her out of the Kingdom.*

(i) Cum autem hæc Charta perfecta & Baronibus audientibus intellecta fuisset, gavisi sunt gaudio magno valde, & juraverunt omnes in præsentia Archiepiscopi sæpe dicti quod visio tempore congruo, pro his libertatibus, si necesse fuerit, decertarent usq; ad mortem. *M. Paris. p. 167.*

3dly, *(i) When the Archbishop of Canterbury, in the days of King John, produced the Charter of Henry the First, by which He granted the ancient Liberties of the Kingdom of England according to the Laws of King Edward, with those Emendations which his Father by the Counsel of the Barons did ratifie; this Charter being read before the Barons, they much rejoiced, and swore, in the presence of the Archbishop, That for those Liberties they would, if need required, spend their blood. And,*

(k) Sequitur forma juramenti soliti & consueti præstari per leges Angliæ in eorum Coronatione, quod Archiepiscopus Cantuariensis ab iisdem Regibus Exigere & recipere consuevit.

4thly, *They made this one part of the (k) Coronation Oath of the Kings of England, That they should consent*

Concedis justas leges & consuetudines esse tenendas, & promittis per te esse protegendas, & ad Honorem Dei corroborandas quas vulgus elegerit. *Resp. Concedo & promitto. Vid. Book of Oaths. H. de Knyght. p. 2746.*

The PREFACE.

to the observation of the just Laws and Customs which the Community of the Realm had chosen, and especially of the Laws of King *Edward*. And in the time of Richard the 2d, it is declared, That the usual and customary Oath which the Kings of England took at their Coronation, and which the Archbishop of *Canterbury* was wont to exact of them, and receive from them, was, That they should grant that the just Laws and Customs which the Community had chosen, should be observed and confirmed by them. All which things put together, seem to conclude an Original compact or establishment of Laws by which the Kings of England were to Govern, and the Kingdom to be Governed, and the Continuance and the Renewal of that Original Establishment by our succeeding Kings. Add to this that Rule of *Grotius*, That *Succession is not a Title of Empire, which gives the form to it, but is only a continuation of the old Title; the Right begun by the Election of the Family, being continued by Succession; and thence with him we reasonably may infer, That Succession only brings down to Kings what the first Election gave, and makes them only Kings according to the Compact, and with the Conditions agreed on at the first admission of their Progenitors to the exercise of the Royal Authority.

To this Historical Account of the present subject, I add these words in the preamble of the Statute made 25. of H. 8. to forbid Impositions paid to the See of *Rome*. "Your Grace's Realm recognising no Superior under God, but only your Grace hath been and is free from Subjection to any Man's Laws, but only to such as have been devised, made, and obtain'd within the Realm for the Wealth of the same; or to such other as by sufferance of your Grace and your Progenitors the People of this your Realm have taken at their free liberty by their own consent to be used among them, and have bound themselves by long use and custom to the observance of the same; not as to the Laws of any Foreign Prince, Potentate or Prelate, but as to the custom'd and ancient Laws of this Realm Originally Established, as the Laws of the same by the said Sufferance, Consent and Custom, and none otherwise. In which words,

1. There seems to be a plain distinction between ancient and accustomed Laws of this Realm, which the People enjoy by Sufferance of our Kings, or were induced into it by the said Sufferance, Consent and Custom, and Laws made, devised, and obtained within this Realm for the wealth of the same; these

* Successio non est titulus imperii qui imperio formam assignet, sed veteris continuatione; jus enim ab Electione conceptum familiarum succedendo continuatur; quare quantum prima Electio tribuit tantum desert Successio. De jure Bell. l. 1. c. 3. §. 10.

Cap. 21.

later

The PREFACE.

Leges istæ vocatæ sunt leges Sancti Edwardi, non quia ipsas primo invenerat, sed quia quasi sub modio positæ & in oblivione derelictæ a tempore R. Edgari avi sui, qui primo manum suam misit ad ipsas inveniendas & statuentes.

Henr. 2^d Knight, de Exam. Angl. 1. 1. c. 15. Chron. Richfield ubi supra.

Sir Robert Atkyns Eng. into the Disp. Power, p. 9.

Fourth Speech at White-hall, A. 1609. p. 530.

531.

latter being Statute-Laws, the other being Laws Originally Established, and Ancient Customs of the Realm, which the People of this Realm have taken at their free liberty, by their own consent to be used among them; and our Kings finding thus established, suffer'd them to enjoy. And these the Histories and Records I have cited tell us were the Laws of St. Edward, or rather of King Edgar, renewed and confirmed by St. Edward, which the Community of England desired of King William, and his Successors, that they might enjoy by his, and their sufferance, or permission, and which accordingly He and they consented that they should enjoy as their proper Laws and ancient Customs; swearing also, at their Coronation, to maintain, protect, and to corroborate them; and which the Archbishop of Canterbury, at his Coronation of them, always exacted to be granted to the People. To which may be added the Laws contained in Magna Charta; which though they run in the stile of a Grant from the King in the word Concessimus, for the honour of the King; yet were they, saith Sir Edward Coke, the Common Laws and Rights of the People before. 3dly, It plainly is asserted, That the whole Realm is subject to these Laws, and to be Governed by them, and no otherwise. And agreeable to this Statute is that excellent Resolution of King James, when his Subjects desired to know of him, Whether he would Rule according to the Ancient form of this State, and the Laws of this Kingdom; or if he had an intention not to limit himself within these bounds, but to alter the same when He thought convenient by the absolute Power of a King. He Answers, That the King was Lex loquens after a sort, binding himself by a double Oath to the observation of the fundamental Laws of his Kingdom, tacitly as by being a King, and so bound to protect as well the People, as the Laws of his Kingdom, and expressly by his Oath at his Coronation: So as every just King, in a settled Kingdom, is bound to observe that paction made to his People by his Laws, in framing his Government agreeable thereunto. And therefore a King governing in a settled Kingdom, leaves to be a King, and degenerates into a Tyrant as soon as He leaves off to Rule according to his Laws. therefore all Kings that are not Tyrants, or perjured, will be glad to bound themselves within the limits of their Laws; and they that perswade them to the contrary, are Vipers and Pests both against them and the Common-wealth.

C. O. N.

CONSIDERATIONS

Humbly offered for Taking the

Oath of Allegiance

TO

King WILLIAM and Queen MARY.

S E C T. I.

BEFORE I produce the particular Arguments which may be urged for taking of this Oath, it may be useful to lay down some general Considerations relating to this matter, viz.

1st. That through the whole Series of our *Kings* it hath often happened, that Ground sufficient hath been given to question the Right of their Succession; and in the Cases of *Edward* the Second, and *Richard* the Second, the Lawfulness of their Deposition; and yet no scruple ever hath been made till now of taking an *Oath of Allegiance* to the *King* who had Possession of the Government. That ever the *Bishop of Carlisle* refused the *Oath of Allegiance*, I do not remember.

2^{dly}, That all the Interests of the *Protestant Religion* plead for the taking of the Oath, if lawfully it can be done, it being reasonable to conceive, that from the present *King* we may expect the Preservation of that *Religion*, and the Defence of it to the utmost of his Power, not only here, but in the *Neighbouring Nations*, against the Malice of the *French King* against it, He being chosen the *Head of the Protestants League*

B

for

for that effect; whereas we cannot reasonably expect King James should, by *French Interests*, return to sway the Scepter, without the outmost hazard of the Interest of *Protestants* in this, and all the *Neighbouring Nations*.

3^{dly}, If we comply with those who take this Oath, we shall prevent that Division of the Church of England, which may, if it be not prevented, give great Advantage to her Enemies; we shall strengthen the Hands of King William, and of the Kingdom, against the Adversaries of Church and State; we shall contribute to the Peace of the Nation, which all good Men are bound to pray for, and seek by all means lawful. If we refuse compliance, we shall accidentally, at least, give Advantage to *Dissenters* (who generally comply) against the Church; we, by our Example, shall cause others to refuse compliance, and so shall strengthen the Hands of the *Papal Party*, and Minister to those Divisions which may cause our Ruine.

4^{thly}, By refusing to take this Oath we shall deprive our selves of our Subsistence, and of the ordinary means of providing for our Family, which without absolute necessity we cannot do; for, saith the *Apostle*, *If any provide not for his own, and especially for those of his own house, he hath denied the faith, and is worse than an Infidel*. We shall deprive our selves of the capacity of exercising our ministerial Function, which without like necessity we cannot justify.

5^{thly}, We seem not well able to Answer the Question, *What it is we would have, or what we would be at?* For if we be asked whether we would have King James return a Conqueror, or whether we would have him put in *statu quo*, we must in Conscience Answer, No, unless we would have *Papery* and *Slavery* entailed upon us. And that he should return any other-wise, as matters now stand, is next to impossible. Since then we cannot be willing that we should be reduced to a capacity of yielding him actual Allegiance upon those sad terms, we seem upon the matter to have renounced the Allegiance we swore to him; which was, 1st, That we were then willing and inclined to yield him true Allegiance; and, 2^{dly}, That we hereafter would act suitably to that Inclination.

6^{thly}, We all conceive it reasonable that we should live peaceably and quietly under the Government of King William;

liam; that we should never be active to introduce King James, or to disturb the Possession of King William; and that whilst we enjoy his Protection, we should pay him the Taxes imposed on us. Now this is all that many of those who write for taking of the Oath, and many of those who take it, think is meant by swearing *Faith, and true Allegiance to King William*; and therefore, according to the ordinary Sense imposed upon the Oath by many Wise, Judicious Persons, we our selves think it reasonable to take it; and surely then, the concerns of the *Protestant Religion* at Home and Abroad; our love to the *Church of England*, to the Peace of the Nation, to our selves, to those Souls to whom we minister, must weigh much with us to engage us to do that, which, in the ordinary import put upon the words by many Wise and Judicious Persons, we own we cannot rationally refuse to do.

S E C T. II

HAVING premised these general Considerations, I now proceed to those Arguments which seem to prove it lawful, in our Circumstances, to take the Oath imposed by the said Act. And,

First, This seems to be self-evident, That a legal Oath, or an Oath imposed by Law, ought to be understood in a sense reconcilable to the Law, and consequently no Man, by virtue of a legal Oath, can be obliged first to transgress the Laws, and then to suffer for so doing.

n. 1.

It is also evident from the nature of the thing, and the determination of our ablest Lawyers, that *Ligeance, or Allegiance* is such a kind of duty as no Man may owe to more than one Lord. It is that duty which no man owes, or by the Law should pay, but to his Sovereign, who, in one Imperial Kingdom, can be but one; and it is agreeable unto our Saviour's Axiom, That no man can serve, just Kvolois, two Supreme Lords.

Cowel verbo
ligeance.

Matth. vi. 24.

Now by the Laws of this Land I owe and am bound to yield Allegiance to him who is in Possession of the Kingdom,
B 2 whether

n. 2.

whether he have rightful Possession or not, and am excusable and free from punishment by the Law, if I afford it; for so the Law runs.

11 H. 7. c. 1.

The King our Sovereign Lord, calling to his remembrance the Duty of Allegiance of his Subjects of this his Realm, and that they, by reason of the same, are bound to serve their Prince and Sovereign Lord, for the time being, in his Wars, for the defence of him and the Land, against Every Rebellion, Power and Might reared against him, and with him to enter and abide in service in Battle, if case so require; and that for the same Service, what Fortune ever fall by chance in the same Battle against the Wind and Will of the Prince (as in this Land sometime past hath been seen) it is not reasonable, but against all Laws, Reason and good Conscience, that the said Subjects, going with their Sovereign Lord in Wars, attending upon him in Person, or being in other places within this Land or without by his Commandment, any thing should lose or forfeit for doing their true Duty, and Service of Allegiance. It be therefore ordained, enacted, and established by the King our Sovereign Lord, by the advice and assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled, and by Authority of the same, that from henceforth no manner of person or persons, whatsoever he or they be, that attend upon the King and Sovereign Lord of this Land, for the time being, in his Person, and do him true and faithful Service of Allegiance, he or they be in no wise convicted or attain of high Treason, ne of other Offences for that cause by Act of Parliament, or otherwise by any Process of Law, whereby he or any of them shall lose, or forfeit Life, Lands, Tenements, Rents, Possessions, Hereditaments, Goods, Chattels, or any other things, but to be for that Deed and Service utterly discharged of any Execution, Trouble or Loss. Where Note,

1st. That this Service and Allegiance mentioned in this Statute, is faithful Service, and true Allegiance once and again, and it is declared to be the duty of all Subjects. 2^{dly}. That

2^{dly}, That it is to be yielded to the King for the time being, without enquiry whether he be the rightful King or no; for it was agreeable to reason of Estate, saith the Lord Bacon, That History of the the Subject should not enquire of the justness of the King's Title, or Reign of H. 7. Quarrel; and it was agreeable to good Conscience, That whatsoever P. 144. ever the fortune of the War were, the Subject should not suffer for his Obedience.

3^{dly}, That this Service and Allegiance is to be yielded to the King for the time being against every Power and Right reared against Him.

4^{thly}, That through the whole Body of the Act he is called the Sovereign Lord of the Land, their Sovereign Lord; and so it seems we need not scruple the use of the said Title in our Prayers, it being only that which the Law of the Land gives to every one that is King for the time being.

5^{thly}, That this Statute hath continued unrepealed about Two hundred years, and therefore hath been so long approved by the whole Nation, and judged well consistent with the duty of Allegiance owing to their lawful Sovereign; they therefore judged it not repugnant to their Oaths of Allegiance to their rightful Sovereign to bear true Allegiance, and to do true and faithful Service of Allegiance to any other King for the time being, who had got quiet possession of the Throne, which is all that this Oath requireth of us.

Moreover, all High Treason committed by a Native of the Land, is an offence against his natural Allegiance, which appears from the Indictments of Treason, (which, saith the Lord Cook, are of all other things most curiously and certainly in-
 vided and penned) for they run for committing this Crime con-
 tra debitum fidei & ligeantiae suae, quod praefato Domino Regi naturaliter, & de jure impendere debuit, Against the duty of Faith and Allegiance which he naturally and of right ought to yield to his Lord the King; or for committing this fact, contra Dominum Regem supremum, & naturalem Dominum suum, Against our Lord the King, his supreme and natural Lord; or, contra naturalem ligeantiam Domino Regi debitam, Against the natural Allegiance due to our Lord the King. n. 3. Cook's Reports, Par. 7. Calvin's Case, P. 435.

Now the same Lord Chief Justice Cook in his descant on these words of the 25th. of Edward the Third, Seigneur le Roy, used in that Statute concerning High Treason, saith, That

“ That this Act is to be understood of a *King in possession* of the Crown and Kingdom; for if there be a *King Regnant in possession*, although he be *Rex de facto*, & *non de jure*, yet he is *Seignior le Roy*, within the purview of this Statute; and the other that hath right, and is out of possession, is not within this Act. Nay, if Treason be committed against a *King, de facto*, & *non de jure*, and afterwards the *King, de jure*, cometh to the Crown, he shall punish the Treason done to the *King, de facto*, and a Pardon by a *King, de jure*, that is not also *King, de facto*, is void. The Lord Chief Justice *Hales* doth also say, That a *King de facto*, and not *de jure*, is a *King* within this Act, and a Treason against Him is punishable, though the right Heir get the Crown.

Pleas of the
Crown, p. 11.

And suitably to these declarations of these great Men, I find in *Bagot's Case*, argued in the Ninth year of Edward the Fourth, that it is said, That the King shall have the advantage of any Forfeiture made to Henry the Sixth, &c. and of *Trespases* made in his time, the Brief shall be, *contra pacem H. 6. nuper de facto*, & *non de jure*, against the peace of Henry the Sixth, late King in Possession, though not of Right, &c. and a Man shall be arraigned of Treason done to the said King Henry in compassing his Death; and it is there added, *Qu' si cessy qu' est ore Roy in temps le Roy Henry n' ait fait Charter de Pardon e' sera void a ore car chescun qu' ferra Charter de Pardon co'vient estre Roy en fait*, That if he who is now King had given a Charter of Pardon in the time of King Henry, that Charter shall be void at present, because it is necessary that every one who makes a Charter of Pardon should be actually King. Now hence;

Pasc. 9. Ed. 4.

I infer, that we cannot reasonably except against the using of those terms, Our most Gracious Sovereign, our Sovereign Lord and Lady King William and Queen Mary, they being only the terms which our Law gives to every one that is in Possession of the Government; yea, say our great Lawyers, terms which belong to the King in Possession alone, though he be *King de facto*, and not *de jure*.

2ly, If Treason committed against a King in Possession, though *de facto* only, by any of his native Subjects, be an offence against his natural Allegiance due to him, and against that duty of Faith and Allegiance which he naturally, and of right ought to yield to him, then is Faith and Allegiance both his Right to challenge, and our Duty to yield to him; and

and then he, by requiring us to swear it, requires us only to give him his Right, and we by so doing shall only engage our selves to the performance of our Duty. If it be his Right, because he is a *King Regnant in Possession*, then it is his Right no longer than he is in Possession, and then the Oath can require it no longer then he is in Possession; and then we have no just Ground to fear that the Oath of Allegiance to King *James* doth bind us now he is not in Possession; or that the Oaths we take unto King *William* and Queen *Mary* can bind us any longer than they are in Possession; this Oath can therefore do no real Injury to King *James*; for if he be not in Possession, he hath not, by these Expositions of *Seignior le Roy*, a Right to actual Allegiance. If he become again the *King Regnant in Possession*, the duty of bearing Faith and Allegiance to him immediately returns without taking any new Oath.

Again, if the *King* that hath Right, and is out of Possession, is not within this Act, and therefore cannot be the *Seignior le Roy* within the purview of this Statute, and therefore not the *King* against whom Treason may be committed, against this Act, then can I not offend against my natural Allegiance, or against any Duty of Faith and Allegiance, which of right I ought to yield to him, and then I do not so offend by taking of the Oath of Faith and true Allegiance to King *William* and Queen *Mary*; and therefore I may take that Oath notwithstanding my former Promise upon Oath to bear Faith and true Allegiance to King *James*, because by doing so I offend not against any Faith and Allegiance due to him.

Moreover, if the *King in Possession* be the *Seignior le Roy* within the purview of this Act, it must be Treason against him to compass or imagine his Death, or to prepare by any Overt-Act to depose him; This being, saith the Lord Coke, *Ibid.* p. 12. a sufficient Overt-Act to prove the compassing and imagination of the Death of the King; for this, upon the matter, is to make the King a Subject, and to dispose of his Kingly Office of Royal Government: Then must it be High Treason against Him to Levy War against him in this Realm, to be adherent to his Enemies within this Realm, giving to them aid and comfort in this Realm, or elsewhere; for all these things are by that Act made Treason

son against the *Stranger le Roy* within the purview of this Statute. This Statute therefore as it is expounded by the Lord Chief Justices, *Coke* and *Hale*, must oblige the Subjects of King *William* and Queen *Mary* not to assist King *James* against them, that being *Treason* against the 25th. of *Edward* the Third, which they cannot be obliged to commit. If King *James*, should he come again to the Possession of the Crown, might punish me for any of these reasonable Acts committed against King *William* and Queen *Mary*, but could not punish me by the Eleventh of *Henry* the Seventh for any Duty of Allegiance, or faithful Service paid to them as my Sovereign Lord and Lady, then sure Allegiance and Faith will be due to them whilst in Possession, and to them only; for were it due to King *James*, I might be punished for not performing it to him. If, lastly, no Pardon now given by King *James* can save me from the guilt of *Treason* against King *William* and Queen *Mary*, and that guilt only be contracted by offending against that Duty of Faith and Allegiance, which of right I owe to them; sure I cannot offend by want of Faith and Allegiance against him who cannot pardon me, but against them only against whom I commit that *Treason*; and therefore unto them alone Faith and Allegiance must of Right be due, and so to them by Oath and Promise may be given.

n. 4.

As an Addition to, or a Consideration strengthening the former Argument, let it be observed,

Sand. de ju-
ram. præl. 7.
§. 7.

1. That it is agreed on all hands, that a *promissory Oath* ceaseth to bind, when the matter of the Oath ceaseth. Thus, if a Man swears to appear at such an Assizes, if there be no Assizes kept there, he cannot be bound to appear, because *impossibile est obligatio*, there is no obligation to impossibilities; and of the matrimonial Vow, St. Paul declareth, That the Woman is bound by the Law whilst her Husband lives; but if her Husband die, she is at liberty to be married to whom she will; because then the matter or object of her Vow is removed.

1. Cor. vii. 39.

Ames.

Others deliver the Rule thus, *Quum miseretur Ratio formalis juramenti juramentum cessat*; When the formal Reason of an Oath ceaseth, the Obligation of the Oath must cease. Thus, if a Man swears Residence on a Living, his Oath only binds him whilst

whilst he is *Incumbent*, because he only took, and only was obliged to take it for that very reason, because he was *Incumbent*. Now the formal Reason of the *Fidelity* and *Allegiance* promised to King *James*, was this, That he was our *Sovereign Lord King James*, saith the *Oath of Allegiance*; the *Supreme Governour of this Realm*, saith that of *Supremacy*; and therefore when he ceaseth, in the sence and meaning of the Law, to be our *Sovereign Lord*, and the *Supreme Governour of this Realm*, my Oath to yield Faith and Allegiance to him must cease to be obliging to me. If when another is *King Regnant in possession*, he is legally dead for that time, his politick capacity being then separated from the natural Person of the *King*, then must the *Subjects of England* be free from their Allegiance to him for that time; for though *Ligeance is due*, as was resolved in *Calvin's Case*, to the natural Person of the *Cook's Reports*, *King*, and not to the politick Capacity only; yet is it only due to P. 438. the natural Person of the *King*, when it is accompanied with his politick Capacity; for otherwise he could not possibly divest himself of it by any the most formal or voluntary resignation of the Government whatsoever, nor by any other Act whatsoever, viz. the entrance into a *Monastery* out of his Dominions, and the continuance there during life; for he cannot cease, while he lives, to be descended of the *Blood-Royal of the Realm*, which immediately constitutes him in his natural Capacity, nor to be *King by Birth-right inherent*; he therefore only in such cases ceaseth to be *King*, and our *Allegiance* to him only ceaseth to be due, because he hath separated from himself that politick Capacity which was before appropriated to his natural Person by the Law, by virtue of the Lineal descent of that Person from the *Blood-Royal*, whereupon Succession doth attend.

Ibid.

2dly, It is agreed on all hands that we cannot have two *Kings* at once, and therefore either the *King Regnant in possession only*, or the *King, de jure, out of possession only*, can be our legal *King*; or he who is in the eye of our Law, our *Sovereign Lord the King*, and the only *Supreme Governour of this Realm*.

Ibid.

3dly, It appeareth by what hath been already said, and by the determination of the Judges in *Calvin's Case*, That *Ligeance is due only to the King*; that the *Ligeance or Faith of the Subject is proprium quatio modo to the King*; omni, soli & semper; it is due therefore to every one who is *Seignior le*

P. 438.

P. 439.

Roy; and so to a King Regnant in possession, though he be only King, de facto, if the Law make him Seigneur le Roy. It is due soli to him alone, if he alone for the time being be our Sovereign Lord the King. It is due unto him semper, as long as he continues the King Regnant in possession, upon the same account.

A. 9. Edw. 4.
Term. Pasch.

4thly, Observe that in Bagot's Case it is determined that le Roy Hen. fust Roy en possession, & il covient qu' le Royalme eut un Roy South qu' les leges seront tennus & maintein dog; per c' qu' il ne fust eins forsq; per usurpation, unc' chescun act judicial fait per luy qu' touche jurisdiction Royal sera bon, & licra le Roy de droit quand il fait regress; King Henry the Sixth was King in possession, and it is necessary that the Kingdom should have a King, under whom the Laws should be held and maintained; therefore be it that he was only in by usurpation, yet every judicial Act done by him which toucheth the Royal jurisdiction shall be good, and shall bind the rightful King when he returns. And it is there added, that le dit Roy H. ne fuit merement comme usurper, car le corone fust taile a luy per Parliament; The said King Henry was not merely as an Usurper, because the Crown was entailed upon him by Act of Parliament, as now it is upon King William. If then il covient qu' le Royalme eut un Roy, The Realm must always have a King, under whom the Laws shall be held and maintained, the King Regnant in possession being he alone under whom, for the time being, they can be held and maintained, he only can be our Sovereign Lord the King for the time being. If every Judicial act done by him which concerns the Royal Jurisdiction shall be good, though it be always done under the Title and Authority of our Sovereign Lord the King, then must he be our Sovereign Lord the King, to all intents and purposes of Law, for the time being; then must the Laws made by him be good also, though they run in the stile of our Sovereign Lord the King, or our Lord the King. And if all this be true of a King Regnant, or in possession, though it should be granted that he held the Kingdom merely by usurpation, it must more certainly be true of one on whom the Kingdom is entailed by Act of Parliament, as in our case it is, and who is therefore not to be looked on as a meer Usurper.

P. 434.

5thly, Observe that in Calvin's Case it is determined, that, *Protectio trahit subjectionem & subiectio protectionem*, Protection requires Subjection, and Subjection Protection. *Quia si-*

cut *Subditus Regi tenetur ad Obedientiam, ita Rex subdito tenetur ad Protectionem*; For as the Subject oweth to the King his true P. 436, 437. and faithful Ligeance and Obedience; so the Sovereign is to govern and protect his Subjects; that Power and Protection draweth Ligeance, and that the Ligeance of the Subject is of as great extent and latitude as the Royal Power and Protection of the King; that though the King in his natural Person is subject to Death, Infir- P. 438. mity, &c. yet in his politick Capacity he is esteem'd to be Immortal, not subject to Death, Infirmary, &c.

Now I would not hence infer with others, that I owe a King no Subjection or Allegiance any longer than he doth actually protect me; or that, if he neglect his duty in protecting me in my Goods or Body, or of protecting the Laws, (according to these words of *Fortescue, Rex ad tutelam legis, Cap. 13. corporum & bonorum erectus est,*) I may neglect my duty of Allegiance to him.

But yet I think it reasonable hence to infer affirmatively,
 " From the King Regnant in possession, I, for the time being,
 " do receive Protection; therefore to him for the time be-
 " ing I do owe Subjection. Protection draws Allegiance,
 " therefore Protection from him draws Allegiance to him.
 " The Ligeance of the Subject is of as great extent and lati-
 " tude as is the Royal Power and Protection of the King;
 " therefore it must extend it self unto all times and places
 " in which, and where this Royal Power is exerted, and
 " this Protection is afforded to me. St. Paul doth found Rom. xiii. 1,4.
 the reason of our Subjection, *Æ uous ſubiacis, to the present Powers,* on this ground, That they are unto us the *Ministers of God for good*; or in the words of Christ, that they are *euangelists, Benefactors*; to whom we therefore owe Subjection Luk. xxij 25.
 on the score of gratitude, as far as we with justice can afford it. " Since therefore, saith the Reverend Bishop Sander- De legum Ob-
 " son, we owe it to the Supreme Powers, even when they lig lcc. 5. §. 18.
 " are usurped, that we enjoy what is our own, that we live
 " safe from slaughter, and from rapine; yea that we live at
 " all; since without them we neither could have remedy or
 " safe-guard against the Lusts, the Furies, or the Injuries
 " of wicked Men; 'tis the most equitable thing, and that
 " which the Old Law of giving and receiving mutually doth
 " require, that for so many and great benefits we should
 " make some return unto that Power which affords them :

And what is that Return, he doth sufficiently explain in the ensuing words, *Profecto perversissima mentis est*, 'Tis certainly an indication of a most perverse mind to desire to live under the Patronage of his Government whom you will not obey, and to refuse to be governed by him whose Protection you enjoy.

Moreover, if the King in his politic Capacity doth never die, and yet the King out of possession is no King, as to that politic Capacity, or as to all intents and purposes of Law; then the King Regnant in possession must be King for all the same intents and purposes, or there must be an *Interregnum*, which yet our Law will not admit of.

n. 5. The Lord Bacon tells us, That the Spirit of this Law was wonderfully pious and noble, being like in matter of War to the Spirit of History of the Reign of H. 7. David in matter of Plague, who saith, Is it not I that commanded the people to be numbred? even I it is that have sinned, and done evil indeed; but these sheep, what have they done? Let thy hand, I pray thee, O Lord my God, be upon me, and on my Fathers house, but not on thy people that they should be plagued. The equity of which Prayer is built on this foundation, That they who had no hand in the Sin, should bear no share in the punishment, and should not be dealt with, *ut oves quæ ducuntur ad mortem, neque evadere possunt*, As sheep led to the slaughter, which they cannot avoid. This, applied unto the present Law, runs thus: They who have had no share in the Sin, if any be committed in that Revolution which hath dispossessed the King of Right, and given possession to the King *de facto*, should have no share in the Punishment, and should not be brought into an unavoidable necessity of being ruined, and undone by it. But now, without the benefit of this Law of Henry the Seventh, and on the supposition of a necessity still laid upon them to retain Faith and Allegiance to the rightful King, though out of possession, and to deny it, whatever they may suffer by so doing, to the King Regnant, or in possession as aforesaid, they must be under an unavoidable necessity of being ruined, and undone; for they cannot reasonably expect Protection from the King Regnant, if they deny him their Allegiance; and not only so, but declare they hold themselves in Conscience bound to give it to his Enemies; nor can they hope to escape those Penalties which are at present, or may hereafter be imposed on all who shall refuse to promise they will

will bear Faith and true Allegiance to him; and so the more honest, and the better Subject any Man is, the greater miseries and hardships will he lie exposed to; for the Sense of his Allegiance will induce him to preserve his *rightful King* upon the Throne, as far as lawfully he can, and hazard Life and Fortunes in so doing; and when he hath done this, he must, if he be still obliged to retain Faith and true Allegiance to him, when out of Possession, in opposition to the *King Regnant*, expose his Life and Fortunes still to a greater and more certain hazard. Whereas, as the Seasonable Discourse well observes, *Let Men argue as much as they please, yet it is certain, that no Man is of such a captivated Allegiance, as by reason of it to engage himself, or think himself engaged to his own certain Ruine and Destruction.* The most valiant and strictly obliged Troops stick not to ask Quarter when they cannot defend themselves any longer, and are justified for it by those to whom they swore to bear Faith of Life and Member, as the old Oath of Ligeance did oblige all Subjects. Excellent to this purpose is that Observation of the same Author, "A Man cannot by Oath, or by any other way, viz.

P. 2.

"by natural Allegiance, be obliged further to any Power, than to do his utmost in behalf thereof; and thought the Oath for the right Magistrate be taken in the strictest terms of bearing Faith or Life, or his natural Allegiance be construed to extend to the venturing the last drop of his Blood in his Service; yet it is to be understood always with this condition, if the Action or Passion may be for that Prince's Advantage. For Instance, In an Army each man is, or may be obliged by Oath to lose his Life to the Prince whose Army it is, rather than turn back, or avoid any danger. This Army, after it hath done its utmost, is beaten, and now the Soldiers can do no more for their Prince than die, which indeed is to do nothing at all, but to cease from doing any thing either for him or themselves: In these streights therefore, it is not repugnant to their Oaths to ask Quarter, or a new Life, nor to take it with an Obligation of Fidelity to those who give it only upon that condition; or with an Oath never more to fight against him who gives it, whilst his Power continues. In like manner, they who live under the full Power of the *King Regnant* for the time being, may be said to take Quarter, for he hath their Lives and

P. 41.

" their

“ their Substance at his Mercy; and so they may as lawfully
 “ oblige themselves to that which the *Prince* in Possession re-
 “ quires from them; viz. that they will live in *Allegiance*,
 “ or obedience to him, and will not attempt any thing a-
 “ gainst him.

n. 6.
 Ibid.

Secondly, The same Lord Bacon adds, That this Law wanted not prudence, and deep foresight; for it did the better take away occasion for the People to bustle themselves to pry into the King's Title; for that, howsoever it fell, their safety was already provided for. And truly, if, as the Author of the Seasonable Discourse Asserts, we may assure our selves of a justifiable Obedience by this, That he who requires it is King in Possession, and has us, and the means of our Subsistence in his Power; then Subjects may easily know the Rule of their Obedience, and the meanest capacity will not be wanting for a Rule of that Subjection to the Higher Powers which the Apostle requires, for Conscience sake, from every Soul. But if all persons whatsoever must be put to the perplexity of examining the Title of every King that reigns over them, and is in Possession of the Government, it will, I fear, prove a very difficult task, if not impossible for every Soul to yield this Subjection, *Et hanc Equivass*, to the present Powers, for Conscience sake, or to every Ordinance of Man for the Lord's sake; there being often very intricate perplexities both as to matter of Right, and as to matter of Fact touching these things: For, not to insist upon the long Contest betwixt the House of York and Lancaster, the meanest capacity, to satisfie himself of the Justice of the present Cause, besides his general knowledge of the Nature and Obligation of an Oath, must be able to pass an exact Judgment first concerning the Desertion of King James, Whether it do not amount to an Abdication. Secondly, Whether there were not some Original Contract, by the Violation of which he may have lost his Right to govern. Thirdly, Whether by his Endeavours to subvert the Fundamentals of this Government he may not have forfeited it. And Fourthly, Whether he may not have done it by actually subjecting part of it to a foreign Power; and both it, and himself, to Papal and French Power. Again on the part of King William, he must know Whether he had not a just cause of War; and if he had, Whether that do not create a right to the thing gained by it; Whether King James, by disan-

ding

ding his Army, and withdrawing his Person, did not virtually yield him the Throne: And must not the Decision of these things, if it be necessary to be made by every Soul in order to the paying that Obedience to the *Higher Powers*, he stands obliged to yield them for Conscience sake, cast many honest Souls into great Mazes, and under insuperable difficulties? And must it not then be very reasonable to conceive, that God hath given them some way more easie? And fitted to their mean capacities for satisfaction in this case; and what can that more likely be, than this of yielding actual Obedience to him whom they find in actual Possession of the Government, whilst they enjoy the benefit of his Protection, and of his Government?

Thirdly, God, saith the Apostle, hath called us to Peace, i. e. n. 7.
to peace even with *Pagans*, and to a peaceful Deportment in 1 Cor. vii. 15.
our conjugal and æconomical Relations; for unto that, he in that *Paragraph* seems more immediately to refer: And the *Apostle* requires the *Christian* to yield Subjection to the present Powers; that by this good Behaviour their Adversaries might be convinced of the peaceable Deportment of *Christians*, and how free their Religion was from causing any disturbance to the Government. Now if *Christianity* did indeed enjoin them to yield this peaceable Subjection to the Powers then reigning, and having full Possession of the Government, without a scrupulous enquiry into the justness of their Titles, they must be then obliged to live peaceably under all Governments, and give disturbance unto none; but if it did enjoin them first exactly to enquire, and satisfy themselves of the validity of every *Princes* Title, and refuse Subjection as oft as they found reason to dispute the Justice of it, it might then often happen, that all of them might be obliged to disturb the Government; and the *Jewish Converts* at that very time, who scrupled the Title of any *Heathen Ruler* over them, might lie under continual Temptations to Disobedience and Tumults. Again, even in our present Case, if we can bring our selves to this perswasion, That *Allegiance is due to a King in Possession for the time being*, we may not only pray for all that are in Authority, that under them we may live peaceable and quiet Lives in all holy 1 Tim. ii. 2.
Conversation and Godliness, but we shall actually do so. But if, after the Wisdom of the *Nation*, in the most solemn Assembly,
hath

hath conferred the Government on such a Person, and given him the Title of our Sovereign Lord the King, and put him in full Possession of the Crown, every private person may still not only Question whether they ought to own him as such; but even deny him their Allegiance, and maintain that by an immutable Law of Nature they stand bound to give it to another, it is in vain to pray we may live peaceable and quiet lives under his Government, to hope for any Settlement of such a Government, or any peaceable Subistence of it, since we conceive our selves indispensably obliged to promote, and to abett all straglings to disturb and overturn it.

n. 8.
Obj.

" But against this Discourse it may be urged, That Allegiance is a Duty we owe unto a lawful Sovereign, not only by virtue of our Oath, which is styled legal Obedience, but by virtue of the Law of Nature. Now though our legal Obedience may cease, as being that which only is imposed on us by Law, and so may be removed by such a Law as rendereth it impracticable, or transfers it to another, yet our natural Allegiance must be immutable, because the Obligations of the Law of Nature are so. To strengthen this Objection let it be considered out of the famous Judgment given in Calvin's Case: First, That our Ligeance is due to our natural Leige Sovereign, descended of the blood Royal of the Kings of this Realm.

P. 440.

Ibid.

Secondly, " That by the Law of Nature is the Faith, Ligeance and Obedience of the Subject due to his Sovereign or Superior, because Magistracy is of Nature; for whatsoever is necessary and profitable for the preservation of the Society of Man, is due by the Law of Nature, but so is Magistracy. Seeing, as Tully saith, *Sine imperio nec domus ulla, nec civitas, nec gens, nec hominum universum genus stare, nec ipse denique mundus potest*, Without Government no House, City, Nation, nor the whole Race of Mankind could stand.

Ibid.

Thirdly, " That seeing Faith, Obedience and Ligeance are due by the Law of Nature, it followeth that the same cannot be changed or taken away.

P. 441.

Fourthly, " That when a Man is out of the Kings legal Protection, as a Man Out-law'd, a Man arraigned with a Premunire, he is not out of his natural Protection; but, notwithstanding
" any

"any Statute, the King may protect and pardon him : And so, in like manner it seems reasonable to distinguish betwixt legal and natural Obedience or Allegiance, and to affirm, That by these Statutes and Judgments we seem to be absolved indeed from our legal, but cannot by them be absolved from our natural Allegiance. I think I have made the Objection as strong as the most scrupulous person would propound it ; and if I can really tender a clear and satisfactory Answer to it, I hope my foregoing Argument will hold good even in the judgment of the most impartial.

I therefore Answer, 1. That what is granted seems to yield Advantage enough to us, viz. That *legal Allegiance may cease to be due to a King de jure, and may be due to a King de facto* ; though natural Allegiance cannot, this last is due Antecedently to all Laws, Promises and Oaths, whereas legal Allegiance is that which we by Law do swear and promise. Natural Allegiance is due to our *natural Liege Lord descended of the Royal Blood of the Kings of this Realm*. Legal is that which the Laws exact to the King for the time being, though he should not be thus our natural Lord. Natural Allegiance is due because he to whom I owe it is *rightful King*. Legal, because he is *King Regnant*, and actually affords me that protection which calls for Subjection. This is undoubtedly mutable, the other is esteem'd immutable. Well then, supposing, but not granting what this Objection doth suppose, That King William were King only *de facto*, no natural Allegiance can be due to him, but only legal and mutable ; that therefore only is required by the Law imposing this Oath, and that according to Law is due to him for his legal Protection ; Why therefore can we not swear to yield him this legal Allegiance, whilst this Protection doth continue.

n. 9.
Repl.

"We cannot, say some, do it, because it obstructs the exerting of our natural Allegiance, and so obliges us not to perform our Duty, not to yield to the *rightful King* his Right. For instance, if a struggle happen betwixt the King *de jure* and *de facto*, it obliges us not to assist the first, as *natural Allegiance*, which never ceaseth, doth require against the latter. Now that is an unlawful Oath which doth oblige us not to perform our Duty.

Obj.

Repl.

But to this I Answer, That this Exception makes it as unlawful for a *Conquered Army* to ask *Quarter*, or to receive it upon the Terms forementioned, or for a *Conquered Nation* to submit unto the *Conqueror* until the lineal Succession be extinct; and yet it is generally granted, That in these Cases we may take *Quarter*, and submit upon condition never to fight against the *Conqueror*, but to bear Faith and true Allegiance to him. 2. This obstruction of our *natural Allegiance* is only such as we may reasonably take for the *presumptive Will* of the *rightful King*, or that which he should rationally grant to his oppressed Subjects; for in extream necessity it is to be presumed, that he would recede from the Rigour of his Right for Preservation of his Subjects, rather than by holding them to it, to subject them to certain Misery and Ruine, without receiving any benefit thereby. We think that the Will of the displeased Prince is, That he would not have us hopelessly begin the Miseries of a new Confusion for him, we therefore must believe his Will, that we should not exert our *Natural Allegiance* in such Cases. Why therefore should it not be as much supposed his *Presumptive Will*, that when we cannot refuse the Promise of bearing Faith and true Allegiance to the *King in Possession for the time being*, without our present Misery and Ruine, we should submit unto it? And therefore it is said, That King Charles ~~did~~ gave way to the taking the Engagement, rather than that his Good Subjects should lose their Estates for refusing the same. And Bishop Sanderfon would not condemn the taking of it in this Sense; " I N. N. promise, " That so long as I live under this Power and Protection, I " will not contrive or attempt any Act of Hostility against " them, but living quietly and peaceably under them, will " endeavour my self faithfully in my Place and Calling to do " what every good Member of a Commonwealth ought to do " for the safety of my Country. Only he adds this, " He " who understandeth the words of the Engagement, so as " if they did oblige him to anything contrary to his Allegiance, or render him unable to act according therunto upon " any reasonable emergent occasion, cannot with a good " Conscience take it; but only he who understands it to be " no way contrary to his bounden Allegiance so long as he is " under such a force, and cannot exercise it; and that when- " soever that force is removed from him so, or he from it,

Case of Engag.
P. 113.

P. 123, 124.

P. 131.

“ as that he hath Power to act according to his Allegiance,
 “ the Obligation of the Engagement of it self determines and
 “ expires. Now if this be understood to be a promise to
 live quietly and peaceably under the Government, without
 contriving or attempting any act of Hostility against it, till
 by the Providence of God it doth expire, or ceaseth to be
 the Government under which I am for the time being; then is
 it the same with that Allegiance which the Statute of *Henry*
the Seventh requireth, and these Cases plead for: But if it only
 be a Promise to live quietly under their Government, till they
 can get an opportunity to destroy, and cut their Throats;
 or an occasion offers it self to side with them that are struggling
 so to do; It is one of the most vain, illusory, senseless Engage-
 ments in the World, for who knoweth not that, without any
 Engagements, all men will be quiet till they can get an oppor-
 tunity to be otherwise? Who can have the face to go to any
Prince with this Petition, Sir, I desire the benefit of your Pro-
 tection, and your Government, assuring you I will give your
 Government no Disturbance till I can get an opportunity to
 do it, or till I can find some Body struggling to Dethrone
 you? Who can judge it fit that any Government should per-
 mit such persons to live in it, who declare themselves bound,
 when any opportunity, or seasonable occasion happens, to
 endeavour its destruction; and when they see any body
 struggling to do so, to side with them? What are such persons
 under the present Government, Subjects or Enemies? If the
 First, then Bishop *Sanderson* informs them, That *Allegiance is*
so intrinsecal, proper, and essential a Duty, and as it were fun-
damental to the Relation of a Subject, qua talis, as that the very
name of a Subject doth after a sort import it. If they be Enemies
 and not Subjects, how can they reasonably expect that Pro-
 tection which is due only unto Subjects, for that very cause
 that they are *Subjects*, and not that Treatment which all
 Governments think fit to use to their avowed Enemies.

Ibid. p. 109.

Secondly, I Answer, That the Reply removes not the whole
 strength of the Argument, part of it being this, That *Treason*
may be committed against a King de facto in Possession, and can-
not be committed against a King de jure out of Possession, and yet
is always committed against the natural Allegiance which is due
to our Sovereign Lord the King. And therefore even this natural

n. 10.
Answ. 2.

Calv. Case. P.
441.

De jure belli
l. 3. c. 18, §. 2.

Calv. Case. P.
435.

Allegiance seems due to the King in Possession, and the exercise of it for the time being is Suspended as to the King out of Possession. Moreover our Law Books, as they tell us, That the Allegiance of the Subject is due by the Law of Nature; so do they also tell us, That Protection and Government is due by the Law of Nature. What Incongruity therefore is it, that for the time that he cannot perform what is due to the Subject by the Law of Nature, the Subject should suspend the exercise of what was due to him by the same Law. Grotius affirms, That *Reges qui Regnis exuti sunt, cum aliis Regni bonis, etiam jus legandi prædiderunt*, That Kings out of Possession of their Kingdoms, have lost the Right of sending Ambassadors; and yet that is a natural Right of Kings: And if that, for that time may be lost to him, and gained to the King in Possession, Why may it not be so as to Natural Allegiance? 3. Though our Lawyers distinguish between Natural and Legal Allegiance, yet they do truly tell us, That they differ not in Substance; but only as the Duty of Allegiance promised and sworn doth differ from it before those Engagements. The Substance and Effect thereof is due by the Law of Nature, the Form and Addition of the Oath is of humane Provision. So that legal Allegiance contains the Natural, and adds the confirmation of an Oath unto it. Where then the legal Obedience is suspended, and ceaseth for a time, the natural Obedience must much more cease to be exerted.

Again, the Allegiance which all Subjects owe unto their Sovereign is natural, or that which is required of them by the Law of Nature, whether they live under an absolute or mix'd Monarchy, under a Government which in no case allows them to resist, to take up Arms against the Sovereign; or under such Governments as that of Poland, that of the King of the Romans, and of Arragon, and that of the Emperor over the Princes of the Empire; where, if they violated their Oaths, if they did not preserve their Laws and Liberties, their very Contract was, Their Promise of Allegiance should go for nothing, the Inhabitants of the Kingdom should not be bound to shew them any Obedience, but they should be empowered to resist them, *sive Rebellionis, aut infidelitatis crimine, without the guilt of Rebellion, or breach of Faith*. Whence it is plainly evident, that all natural Allegiance is not immutable and indispen-

See Bodin l. 2.
de Republ. c. 5.
Grot. de jure
belli annot. ad
l. 1. c. 4. Sect. 14.
Sleid. Com-
ment. l. 8. p.
195. See Sect.
3. Numb. 4.

Thirdly, To this Objection I answer by Explanation, and Distinction of a natural Right, or a Right grounded on the Law of Nature; and by Application of these things to the present Subject.

1. The Law of Nature is that which the Dictate of Reason, from Principles known, and approved from their own evidence, obligeth me to judge fit to be done, or left undone, by reason of that Moral honesty or turpitude which is apparent in the Action.

2. Nature may be esteemed to dictate any thing either directly, as a thing consentaneous to the Laws of Reason, fit and agreeable to natural Principles; as perhaps *Kingly Government* in opposition to *Aristocracy*, or *Democracy*; or else Preceptively, as necessary to be done, or be omitted by virtue of some evidence, which clearly shews the Equity or Turpitude of the performance or omission of it.

3. Of these Laws of Nature some are Principles, and those either general; as that what is good is to be chosen; what evil is to be avoided, that I am to do; or avoid any thing out of respect unto some good or evil to my Soul or Body. That which I judge to be fit, due, and meet by the Laws of Humanity and Justice to be done to me, in the like cases I must do to others; that the publick Good is to be preferr'd before my private Good of the same kind.

Or, secondly, relating to Particulars, *viz.* That I ought to do good to all, as far as I can do it without Spiritual, or great Temporal damage to my self. *2dly*, That I am to do no hurt or damage to any innocent person, if I can avoid it. *3dly*, That I am to be true to my Word, and faithful to my Promise, especially when I have, for the more assurance of another, confirmed it with an Oath. *4thly*, That I ought to do my best endeavour, that he who hath deserved well of me, should receive well from me. And against these Laws of Nature God himself cannot dispense, *i. e.* he cannot grant liberty to any one to act against the Tenor of these Laws, even in those circumstances in which they would have otherwise been obliging; and therefore they are truly called immutable, and are the same in all who are endowed with the exercise of Common Reason.

Some are Conclusions resulting from these Principles, and they do only bind, as we may clearly see the natural connexion of them with these Principles, and when no Laws of a more strict connexion with them intervene to hinder their obliging force.

4. Some Laws of Nature continually do oblige under all circumstances, and so their Obligation never ceaseth; as the Laws forbidding the hatred of God and Idolatry: Others oblige only under such circumstances; as, *Thou shalt not kill*, viz. except when it is necessary for thy own preservation and defence; *Thou shalt not take away what is thy Brothers*, viz. unless extream necessity compel thee to it. In these latter there must be a comparison of Duties, and of Circumstances, that we may know the better when they are to us Laws of Nature, and when not. Now to apply these things.

n. 12.

It seemeth hard to say, that by any dictate of Common Reason, clear by its own native Light, or any first Principle of Nature, we, in these circumstances, are still obliged to yield natural Allegiance to King *James*, and cannot, without violating these Common Principles of clearest Reason, afford it to King *William* and Queen *Mary*; for then that great *Assembly* of the Nation, those Reverend Bishops, and that numerous Clergy, which believe they may, and therefore actually have done the contrary, and either have obliged, or exhorted others so to do, must lin against the clearest light of Common Reason, which sure we cannot charitably think or say; then must this Law of *Henry the Seventh*, which hath so long obtained, and all those Judgments which have been made so solemnly by the great *Sages* of the Law, have been Laws made, and Judgments given, and Sentences pronounced against the clearest light of Nature. Then, thirdly, all persons of other Nations, who in like cases have done the like in *Swedeland*, *Portugal*, and *Germany*, and other places; and all those learned Persons, who in their Writings have expressly, or by just consequence allow'd the transferring of our Allegiance in these circumstances, must both have acted themselves, and authorized others to act in contradiction to the plain light of humane Reason; which yet seems a plain contradiction to that property of a true Law of Nature, that it is the same in all who are endowed with the exercise of Common Reason.

2dly, When

2^{dly}, When it is said that Allegiance from the Subject is due by the Law of Nature to his Sovereign, this is none of those Laws of Nature which oblige under all Circumstances; For when I am subdued by the Power of another who hath conquered me, and hath my life at his mercy, no Man doubts but that I may engage, for preservation of my life, that I will not be active against him that gives it; That is, that I will no further bear Allegiance to my former Sovereign. When a Nation, or part of it, is subdued by a Conqueror, without visible hopes of recovering Freedom, they may swear Allegiance to the Conqueror. "Upon Frontiers, saith the *Seasonable Discourse*, all Men are most strictly obliged to the destruction of one of another, according to their several Allegiances; yet "it happeneth daily, that by Sieges, and other Extremities, "Towns are reduced to the Jurisdiction of those to whom they were sworn not to submit, but to destroy; and upon "their Surrender, the must swear Allegiance to another Master, and to destroy those whom before they were bound to preserve; if they afterwards be re-taken by their former Prince, he cannot look upon them as Traitors or Rebels; for he could neither expect Allegiance from them, "when it was impossible for them to give it; or the refusal of Allegiance to the Conqueror, when it was impossible they should refuse it without being put to the Sword. The Reasons which justify such particular places, justify a more universal; such as are whole Kingdoms, which are made out of such particular places, and are subject to the same Fate, and necessity of War, to the same Confusions and Revolutions of Government, and so to the same opposite Allegiance. This therefore can be only such a Law of Nature as binds under such circumstances, and ceaseth when those circumstances cease, viz. When Power of Protecting, Governing and Preserving cease without my fault, and I can have them only from another upon condition of Allegiance.

n. 13.

P. 47.

3^{dly}, Let us considerably peruse the Grounds of natural Allegiance, or the Foundations upon which, according to the learned, it relies; and they, perhaps, may somewhat contribute unto our satisfaction in this case. The foundation of legal Allegiance is the natural Law of Fidelity, which obligeth

n. 14.

us

us to be true unto our Promises and Oaths; and this the Objection grants may cease. The grounds of natural Allegiance are by our Judges in that famous Case of *Calvin* declared to be two:

1. Protection and Government; and from this Ground it is demonstratively evident, that my natural Allegiance must cease to be actually due to him who cannot govern and protect me, and must be due to him who actually doth so.

2dly, The Necessity of Government, and the Profit of it for the preserving the Society of Man: 'tis necessary, because the Prince cannot attain the ends of Government, unless his Subjects yield him due Obedience; 'tis profitable, because Peace is preserved, and Justice hath its due uninterrupted Current, whilst the King, who protects and governs, finds Obedience from his Subjects. Now both these Grounds, as hath been shewn in *Bago's* Case, and from the Reverend Bishop *Sanderfon*, require Obedience to the King in Possession for the time being; for if there be a necessity, when we have lost our Governor *de jure*, and he is out of Possession, that we should still have Government, and we cannot have it but from the King *de facto*; there must be a necessity that we should yield Obedience or Allegiance to him; for they are words of the same import, and used indifferently for the same thing in the Old Statute of Allegiance; the Old Oath being commonly called, saith the Act for the abrogation of it, *The Oath of Allegiance or Obedience*. Peace also is preserved, and Justice hath its Course under the King in Possession, and cannot have its Course under him who is out of Possession.

P. 158.

Case of Engag.
P. 109.

3dly, Bishop *Sanderfon* saith, That Allegiance is a Duty that every Subject by the Law of Nature owes to his Country, and consequently to the Supreme Power thereof; for the same Law which we may call the Law of Nature (at least in a large acceptation) which inclineth particular Men to grow into one Civil Body of a Commonwealth, must necessarily withal imprint a Sense and tacite acknowledgment of such a Duty of Allegiance in every inferior Member of the Body to the Sovereign Power by which the Commonwealth is governed, as is necessary for the preservation of the whole Body: It therefore, say I, must imprint an acknowledgment of such a Duty of Allegiance in every inferior Member of the Body to the King, *de facto*, in full Possession of the Government, because he is *Caput communis*; and is, for the time being, that Sovereign.

reign.

reign Power by which the Common-wealth is governed. And this he elsewhere proveth in our very case by this cogent Argument: "Whatsoever is to be done for any end, is so far Lect. 5. de leg. §. 19.
 "to be done, as it seems necessary and profitable for the ob-
 "taining of that end; but the end of Civil Government, and
 "of the Obedience due to it, is the safety and tranquillity of
 "humane Society; and therefore every Subject is bound to
 "obey the Commands of him who, *de facto*, is *Supreme Go-*
 "vernour, as far as the safety and tranquillity of that Society
 "requires that Obedience. Now three things are necessary
 "for preserving of humane Society: 1. Defence of our
 "Country against Foreign force, and the attempts of her
 "Enemies. [Add, And by parity of Reason, against those
 "who would create Seditions in her bowels; for, surely, they
 "are opposite to the safety and tranquillity of the Society.]
 "2dly, The administration of Justice, by which Rewards and
 "Punishments may duly be administred as by Law established.
 "3dly, The care of Trade and Merchandice; for in these
 "three things the welfare of Mankind doth so much consist,
 "that without them all things must run to ruin; all places
 "will be filled with Rapines, Murthers, Frauds and Injuries,
 "The Lives and Fortunes of the most innocent Subjects will
 "become a prey to the Lust of the more powerful; the only
 "remedy against which Evils is, That good Subjects remem-
 "ber that it is their duty to obey their Commands and Laws,
 "in all things which relate unto the publick safety, by whose
 "Sword and Authority they are defended from the injuries
 "of wicked Men. I know he concludes with this exception,
 "That we must *so yield Obedience to the Lawgiver, as not to violate* §. 20.
the Right of the Lawful Heir, or do any thing to his prejudice;
 Which Exception shall be considered in the following Head.

4thly, Allegiance may be grounded on that Law of Justice
 which enjoins us to give every one his right. But then ac-
 cording to our Laws, according to that Old Rule, *Protection*
doth require Allegiance; according to those known Principles,
That there must be always a Government under which the Laws
may be preserved, and Justice executed; and where there is a
 Government, there must be Obedience: I say, according to
 these Rules, Allegiance for the time being must be the Right

of the King in possession for the time being. Moreover, in many things which are in general enjoined by the Law of Nature, humane Laws determine both of the exercise and measures of them; for instance, *Thou shalt not steal*; Thou shalt not defraud another of his Right, are Laws of Nature; but yet the Law of Man determines what shall be esteemed stealing, and what defrauding others of their Right. *Thou shalt not kill*, is another Law of Nature; but yet the Law of Man determines when I may kill without committing Murther, and when not; so in like manner the Law of Nature requires Allegiance to my Sovereign; but for any thing I can see to the contrary, the Law of Man may determine who shall be esteemed that Sovereign, and what is that Allegiance I stand bound to yield him; and were this otherwise, all those Laws fore-mentioned of Poland, Avayon, and the Imperial Princes, must be contrary to the Law of Nature, and to the natural Allegiance due to their Sovereigns, 3dly, There can be no prejudice to the Right of the King, *de jure*, in these matters in which he doth or ought to be presumed willing to recede from that Right.

n. 10

Ibid. Sect. 21.

Now, saith the Bishop, it is to be presumed that Allegiance should be so far pard to the Invader, as it serves for the good of the Community; the safety of which is far more the interest of the right Heir, than of him who hath the Possession without Right; and so this Father of the Country cannot but have that affection for it; that rather than it should be destroyed, and his Subjects ruined, they should modestly accommodate themselves to the present affairs, than by their unreasonable resistance (add, or refusal of Allegiance) they should bring upon themselves certain destruction.

5thly, The true foundation of Allegiance is that of the Law of Gratitude, which saith, That from whom I receive Protection, and all the other benefits of Government, to him in gratitude I owe Subjection and Obedience; and upon this Subjection is founded by St. Paul, declaring, That we must needs be subject, because he is the Minister of God for good. Now this makes plainly for Subjection to that King from whom, for the time being, we receive Protection, and all the benefits of Government. This is the ground of that Obedience which Children owe unto their Parents and Servants to their Masters; and therefore

fore where these cease, we may much more suppose that the Allegiance of Subjects to their *Prince* should cease. Now,

Though no Man can have the same relation to me as my *Father* has, or do that Action which gave him that Relation; yet do the *Roman Laws* conclude, That even *Fathers* may forfeit this right; so far, as that their Childrens obligation to Obedience to them may cease. The Law of the *Twelve Tables* saith, That if the *Father* sell his *Son* thrice, or his *Daughter* once, they shall be freed from obligation of Obedience to him; the *Roman* and *Imperial Laws*, That if the *Parents* will not nourish, but expose their *Children*, they shall have no power to recover them to their Obedience, though by that Action they cannot cease to be their natural *Parents*; That if *Parents* seek to poison, or otherwise to attempt the life of their *Children*, or neglect to take care of them, then shall they have no benefit of their Obedience. And as for *Servants*, their Law provided thus; That if sick *Servants* were neglected by their *Masters*, if, in that state, they cast them out of their *Houses*, neither providing for them themselves, nor committing them to the care of others, they were to enjoy their liberty. Now if our Case should be determined by the equity of these Rules, and I can see no reason why it may not be so; I mean if we do only take our measures of it from the Law of Nature, abstracting from our Oaths, and the decision of the *Holy Scriptures*; that *Father* of the Country who hath deserted us, cast off all care of us, exposed us to the pleasure of another; that *Master* who hath left us when sick and distemper'd, neither taking care of us himself, nor committing the care of us to any other, must have lost his Title to our Subjection and Obedience.

Vide Sharock
de officiis se-
cundum natu-
ræ jus, c. 5.
n. 7. p. 352.

Ibid. p. 353.

Lastly, I answer, That in matters of this nature there must be place for a comparison of natural Obligations; and when they seem to clash, those which are more immediate, and nearest to first Principles; those which are most obliging under all circumstances; those which are most immutable, and indispensable, must prevail against all others which have less of these great Characters of the Law of Nature instamped upon them. Let us then bring this matter to these Rules, as Men supposed to be left purely to the Law of Nature for the decision of this case, as the Objection doth suppose, and then it seems to be fairly argued,

n. 15.

E. 2.

L. That

1. That the first and most immediate Law of Nature is Self-love and Preservation, as that imports the love and preservation of my Soul and Body; of my Soul absolutely, and of my Body by all lawful means, or by such means as are not prejudicial to the higher interests of my Soul. This is so certainly the fundamental Ground of Action, that I can have no Motive to do any thing, and so no Motive to yield Obedience to any *Sovereign*, which may not be resolved into these Principles; and when these Principles combine, and equally affect the whole Society, 'tis their most strong and most immediate bond of Action; according to that known Rule, *salus populi est suprema Lex*. When then the safety and preservation of the Community depends upon their promise of Allegiance to the *Supreme Governor* for the time being, as it must do when they are in his Power, and cannot have the benefit of his Protection, and his Government without it; it must prevail above all Obligations of Allegiance to him, who, being out of Possession, can no more Protect or Govern them.

Obj. If it be said that the acting, even in this case, contrary to their Promise and Allegiance, rendring them guilty of falsehood and perjury, must be more prejudicial to their Souls, than their refusal of Allegiance to the *King Regnant* can be to their Bodies; and so it must be acting contrary to the true Principle of Preservation and Self-love.

I answer by Concession, That if thus acting were indeed acting contrary to the true intent and meaning of the Oath of Allegiance; and it were lawful thus to bind our selves by Oath and Promise; we by thus acting should act against Self-love, and the true import of Self-preservation; but if Men will examine either their own Actions, or the general Conditions of an Oath, they will find reason to believe, that, in so doing, they do not indeed act against the true intent and meaning of their Oath or Promise. For,

1. This Oath of Allegiance, say these Objectors doth oblige us to *spend the last drop of our Blood, and to hazard our Lives and Fortunes in the King's Service against all Men whatsoever*; and yet did any of this Nation, besides *Roman Catholics*, conceive themselves obliged thus to act for *King James* against the *Prince of Orange*, when they saw they could not do it without

without being active towards the Ruine of themselves, their Liberties and their Religion? 'Tis therefore evident, That, by their Actions, they declared they judged themselves exempted so far from that Oath, as it did lay upon them a necessity of being instrumental to promote the Ruine of themselves, the Laws and the Religion of the Nation. Or doth any Man call a Conquer'd Nation, or a City taken by Storm, or a Routed Army, perjured, because they accept of their Lives upon condition of promising, upon Oath, Allegiance to their Conqueror?

2dly. The General condition of all Oaths, is, That I will perform them so long, and so far as it is lawful so to do. Now can any Man think it lawful to be active to the apparent Ruine of himself, the Laws, Religion, and Community of which he is a Member. If not, he cannot think himself obliged by his Oath or Promise to those things which will, in humane probability, have these sad Effects.

3dly. The Oath of Allegiance is a legal Oath imposed by the Representatives and Guardians of the Community. Now can it reasonably be thought that they intended to bind the whole Community, and in them, themselves to ruine both their Laws, Religion, and their private Interests? If not, no Man can rationally think himself obliged by such an Oath to do that which apparently doth tend to such an End.

Again, the immediate Law of all Societies is the publick Good. Now Allegiance, saith Bishop Sanderfon, is a Duty that every Subject owes to his Country, that is, the Publick, and consequently to the Supreme. And hence it seems demonstratively to follow, that he cannot owe it to the Supreme Power, when the performance of it tends plainly, and directly to the ruine of the publick Good, and therefore cannot owe it to him, when it tends to the destruction of that Community of which he is a Member. The Allegiance which is confirmed by Oath is stronger than is natural Allegiance; and yet the Casuists do generally teach, that when the Observation of a promissory Oath is plainly destructive of the publick Good, it is not Obligatory, because the matter of it then becomes unlawful. For,

1. That

1. That which we cannot lawfully promise, we cannot swear to do; but we cannot lawfully Promise to be actively Obedient to the Commands of our *Superior* to the ruine of the Publick; we cannot therefore swear to be so.

2. An Oath can only bind us to do that which we can be obliged to do; but no Member of a Community can be obliged to do what is destructive of the Good of the Community, he being, by virtue of his Relation to it, to seek the Peace and Welfare of it; and so pray unto the Lord for it; and therefore cannot be obliged to act in contradiction to his Duty, and his Prayers.

Mar. ij. 27. *The Sabbath was made for Man*; that is, for his behoof, not *Man for the Sabbath*; whence he concludes, That the Rest commanded on that Day, and in which the Observation of it did consist, may be violated for the preservation of Man. Accordingly Kings were made for the publick Good, the Welfare and Safety of the Government; and Allegiance, saith St. Paul, is therefore due to them, *because they are the Ministers of God to us for good*: The Community or Publick was not made for them, and consequently the humane Laws concerning them, and the Allegiance we owe to them may be violated, when it is necessary to do so for the preservation of the Publick. When therefore Subjects are under a necessity either to Hazard or Ruine the Publick, or to transferr their Allegiance, for the time being, to the King Regnant, they may do the latter.

Moreover, it may very probably be argued, That when a King, being wrongfully outed, repairs to a foreign Power by which to conquer his own Kingdom, I am not bound by my Allegiance tamely to give up my self, without resistance, to be enslaved to that power, as I must be, if, in such cases, I may not resist; it being not in the King's Power, how much soever it may be in his Will, to Rule or to Command these Conquerors, and therefore not to hinder our enslavement to them.

Yes, when he visibly attempteth to dissolve those Laws on the Preservation of which the Good of the Community consists, or by such evil Methods to subject it to Popery and Slavery, i.e. to Temporal and Eternal Ruine, my Duty of Allegiance cannot

cannot oblige me to be obedient to him in prosecution of those ends. Had I sworn to stay a Prisoner in such a House, that Oath would bind me to stay in it, though I found it smoky, and wanting Accommodations for my Health; but not when it is on Fire, or ready to fall down upon my Head, because the Observation of it to my own immediate Destruction, is against the Law of Nature. Much less can my Oath of Allegiance bind me to the Subversion of the Publick, that being more against the same Law, and the very End of *Societies*. When therefore a King hath put his Conscience under such Guides as render it morally impossible for him to desist from the Subversion of the Established Religion, and his Power, and Person under such Hands, that it is morally impossible he should return to his Government without enslaving the Community, and subverting her Laws and Liberties, I know not what natural Allegiance, or Principles of meer natural Reason can tie me to hazard my own safety, by refusing to promise Allegiance for the time being to another who will preserve both.

In cases of such unhappy Contests between the good of the Governor and the Governed, it seems most natural to think it better, *ut pereat unus, potius quam unitas*. For the present Governor, in such a struggle, may suffer much, and yet the Government may not suffer, but be as well preserved in another Person. But when a *Kingdom* and a *Church* is thus subverted and enslaved, the Government then suffers without prospect of Recovery, and the Effects of these things reach unto Posterity. Witness the woeful Spectacle of *France*.

According to the supposition of the Statute of *Henry the Seventh*, and the Cases cited, the King out of Possession is *de jure* King, and so we must be his Subjects *de jure*; these being essential Relatives which mutually infer one of the other. If we be of right his Subjects, we must owe him Allegiance of right; and then, How can we promise and swear to give away his right to another?

Obj. 2.

To this Objection I have given a sufficient Answer in what I have Discoursed on the Fourth Foundation of Allegiance, the Law of Justice. To which things I add,

n. 16.

Ans.

1st. That

1st. That as a King *de jure* hath right to the Allegiance of his Subjects, so have they also the same right to Government, and Protection by him, and he is by his Coronation Oath obliged to afford it. If then, whilst he is out of Possession, the exercise of his Government and Protection ceaseth, though I have a right to it, and he is not to be esteemed a violater of his Oath because he doth not then protect us, or execute Justice for us; Why may not the Exercise of that Allegiance which I have promised by Oath to him cease, though he hath the same right to it?

See Bagot's
Case, 9 H. 4.
Term Trin.

2^{dly}. When we say a King out of Possession hath right to the Allegiance of his Subjects, we mean not an immediate right, but mediate; i. e. our meaning is, That first he hath right to Possession and actual Government, and by that to Allegiance; he therefore must be first in Possession, before we can exert the Allegiance due to him. Accordingly, though Edward the Fourth is by Act of Parliament in the First Year of his Reign declared to have been in Right, from the Death of the Right Noble Prince Richard Duke of York, very just King of the Realm of England; yet because he only took upon him to use his Right and Title to the said Realm of England on the Fourth of March, A. D. 1460. and entered only then into the Exercise of the Royal Estate, Dignity, Preheminence and Power of the same Crown, and to the Governance of the said Realm of England, by the amouion of Henry the Sixth (till then King in Deed, though not of Right;) therefore is he said by the Act of Parliament to have been only on the Fourth day of March in the lawful Possession of the same Realm, with the Royal Power, Preheminence, Estate and Dignity belonging to the Crown thereof; and then only to be lawfully seized and possessed of the Crown of England in his said Right and Title, and of all Prerogatives belonging to it.

Now what is only thus of Right, may be both promised and performed to another, whilst this other is in Possession; though he be not *de jure* so, provided he be so according to the Course of Law, or the accustomed Rights of giving and receiving Possession, as is apparent in the Case of a Lord of a Manor, who is thus in Possession of what is the Right of another, who is by Fraud, or corrupt Verdict, or Judgment, outed of his Right; for the Homage due of Right to the true

Owner

owner is here, by Law, as occasion offers it self, to be sworn to the unjust Possessor. Nay we read of divers Acts of *Parliament* continuing the Name and Honour of a King to him, who, by their own Confession, had not the just Title, and only proclaiming him who had the right Title, *Heir apparent to the Crown*, as in the very Case of * *Richard Duke of York* and *Henry the Sixth*; and in the Case of † *King Stephen* and *Henry Duke of Normandy*: Not to mention the Treaty of Peace made afterwards for the avoiding the shedding of Christian Blood, || That *Henry the First being invested with the Crown, by the Act of the Kingdom, should enjoy the same during his Life*, though the just Title was in *Robert*.

* In ipsa autem vigilia capta fuit conclusio differentie hujusmodi, viz. Quod Dux, & Filii sui, Edwardus Comes Marchie,

ac Edmundus Comes Rutlandie, qui ambo discretionis annos attigerant, jurarent ipsi Regi fidelitatem, quodque ipsum recognoscerent eorum Regem quamdiu ageret in humanis; id enim *Parliamentum ipsum jam decreverat*, addendo, de ipsius Regis consensu, quod quamprimum Rex ille in fata discesserit, licebit dicto Duci, suisque Hæredibus, coronam Angliæ vindicare, & possidere. *Hist. Croyl. Ed. Oxon. p. 550.* † Theobaldus Cantuariensis— Utrosque demum ad concordiam emollivit, in tantum quod Rex Juvenem Ducem in filium susceperit adoptivum, & juramenti attestatione Regni sui constituit Hæredem, Regi tamen honorem debitum, fidemque, dum viveret, Dux ipse promiserat se conservaturum. *Ibid. p. 451. Vide Dunelm. continuat. p. 282.*

|| Daniel's *Hist. pag. 91.*

This Assertion, That actual Possession makes a *Sovereign Lord the King* for the time being, destroys all *Hereditary Successions*, in which the *Heir* is the power in being without farther Act done by him, or passed by the People, or others, and without actual Possession.

Since it is certain that no person can now claim by a *Paternal Authority* uninterrupted from the beginning, 'tis certain that all Kingdoms are now *Hereditary* by virtue of their own Consent and Compact, or by their own Establishment, that the Crown shall be continued in such a Line; it therefore is *Hereditary*, because they have consented and agreed it should be so. If then all Parties concerned have consented also to a Law that a *King*, in quiet Possession of this Government, shall be looked upon, for the time being as the *Heir*; that is, shall be to all intents and purposes, as much our *Sovereign Lord the King*, as if he were so: This

n. 17.
Obj. 3.

Ans.

Law can bear no Contradiction to such an *Hereditary Succession*, par. 3. c. 1. p. 75.

cession, but only be a wise Provision, that in the interruptions of the *Regular Succession*, Justice should never fail, there being by the Law always a King in whose name the Laws are to be maintained and executed; and therefore they who have the least acquaintance with our *History*, must know that tho' our Kings *de facto* were more numerous, before the Union of the two Houses, than those *de jure*; yet are they equally placed in the Catalogue of the *Hereditary Kings of England*, and Allegiance was sworn to them by their Subjects without any Scruple, as well as to the Kings *de jure*.

2^{dly}. That the Heir is of Right the Power without farther Act done by him, than claiming of the Crown, may be granted; but that he is actually the Power in Being, whilst he is incapable, by being out of Possession, to exercise any Act belonging to the *Supreme Power*, is denied: For we find throughout the whole *History* of the Kings of England, That they who had the Right by Proximity of Blood, but wanted Possession, were never owned as *Kings* and *Queens of England*, as is visible in the Case of Robert the Eldest Son of the Conqueror, of Maud the Empress of Germany, Prince Arthur and Elenor his Sister, and of all the Issue of Lionel Duke of Clarence; who, by the Judgment of the High Court of Parliament, in the Eighth of Richard the Second, were declared Heirs Apparent to the Crown, in case King Richard should die without Issue, as he did. On the other hand, they who were Kings *de facto*, and not of Right, as unquestionably were King Stephen and King John, and as Henry IV. V and VI. by Act of Parliament were declared to be, were always reckoned as true Kings of England, and Allegiance was sworn, and paid to them as such.

n. 18.

Obj. 4.

An *Inferior Magistrate* is not to be obeyed or owned as our Superior in opposition to a Superior Magistrate's Command, because in such things he hath no lawful Call, Warrant or Commission; and for the same reason a King *de facto* is not to be owned, or obeyed as our Superior in opposition to a King *de jure*, because he cannot be supposed to have a lawful Call or Warrant to Exercise the Kingly Government.

If an *Inferior Magistrate* hath a Law to warrant his Commands, he is to obeyed even against the verbal commands of his *Superior* without law: Now a *King de facto*, in quiet Possession, hath a Law to warrant his Acting as our *Sovereign Lord the King*, and requiring our Faith and true Allegiance to him for the time being; he therefore is to be owned and obeyed, as having a legal Call to the Government for the time being.

Secondly, To give a satisfactory Answer to this, and many Objections of the like nature, it will be proper to consider what a Call, or a Commission to be the *Governor* of any *Nation* doth import; and for the Resolution of this Enquiry let it be noted,

1. That God doth not now, as in the Case of *Saul* and *David*, by himself appoint and nominate the Person who shall sway the Sceptre in any Nation of the World. We see by plain Experience God doth not interpose in this extraordinary manner in the Election or Constitution of *Supérieurs*. The *Roman Emperors* had no such Appointment, but were Elected by the *Roman Armies*, or chosen and confirmed by the *Senate*; whence it must follow, That an immediate Appointment or Designation of the Person by God, cannot be necessary to render any *Prince* God's Ordinance.

2. By virtue of God's general Appointment or Ordinance, that all *Nations* shall have some Government placed over them, no Individual Person can claim a Right to be the *Higher Power* in any *Nation* more than Others; nor are the People tied to yield Subjection by it to this Man, rather than to that: As then the former Designation was more, so this is less than reasonably can be required to make a Man the *Individual Person* who is God's *Civil Ordinance*, in reference to such a *Nation*.

3. It cannot be said of any Person or Family at present in the World, That he, or it claimeth, or holdeth the Throne in any Nation by a Right of *Pathehood* or *Primogeniture* derived from *Adam*. I know no *Prince* on Earth who thus pretendeth to derive his Pedigree, and am perswaded, that, if any hath the Vanity to make such an Extravagant Pretence, he cannot thus make out his Title. It remains therefore,

4. That Government be conveyed to this or that Individual Person or Family, by Compact, or Consent, and Choice of the Persons governed, that such a Person or Family shall Exercise the Government over such a Nation, it therefore must be that Choice, Consent, or Contract of the Persons to be governed which renders any person the Ordinance of God to such a Nation; that is, it must be granted that all the present Governors of any Nation become God's Ordinance to them by the Consent of the Community. Where therefore any person is invested with the Supremacy by them to whom God hath committed the Choice of a Superior, or by their consent to have such Persons for their Superiors, there is the Ordinance of God. And if they do admit that person to the Government, who by Constitutions and antecedent Compacts hath a right to be so, he is to them the Ordinance of God de jure. If, in this Choice, they deviate substantially from these Constitutions, he only is the Ordinance of God de facto; but yet he truly is the Ordinance of God, because he is so by the only means which God hath left for the Investing any Individual Person with that Office. Hence do we find throughout the History of our Kings, that the Election of, or else a Compact with the People, hath generally been looked upon as a thing proper either to satisfy the People, or to strengthen their Title to the Crown, thus, v. g.

Dunelm. p. 195.
Hoved. par. 1.
p. 258.

Of the Conqueror, Simeon Dunelmensis apd. Hoveden inform us, That *Fædus pepigit, he made a Covenant with his People*, and at his Coronation took an Oath to defend the Holy Church of God, and the Rectors of the same, to govern the Universal People Subject to him justly, to establish equal Laws, and see them duly executed.

Ibid. p. 52.

William the Second held the Possession of the Crown of England by the Will of the Kingdom, the Succession in Right of Primogeniture being none of his.

* Dan. p. 61.
Rich. Huguff.
p. 310.

† *Assensu populi*
gem electum.

Malmesb. Hist.

Nov. 1. 1. f.

101. b. Rich.

Huguff. p. 314.

* Henry the First was invested in the Crown by the Act of the Kingdom. Concilio Communi Baronum Regni Anglia, saith
† *Cleri in Re-*
the King.

King Stephen declares himself to be chosen King † by the consent of the People and the Clergy, as he had good reason to do, having no Title at all, saith Daniel, but as one of the Blood, by meer Election advanced to the Crown, p. 69. King

King John received the Crown by way of Election, as being chosen by the States, saith Daniel.

The Succession of Edward the Second, saith ¹ Walsingham, was not so much by Right of Inheritance, as by the unanimous Assent of the Peers and Great Men.

Edward the Third was Elected ² with the Universal consent of the People, upon his Fathers Resignation.

Edward the Fourth, on his entrance on the Government, makes a solemn declaration ³ of his Right to the Crown of England; challenging it to belong to him by a double Right; The first as Son and Heir to Richard Duke of York, the Rightful Heir of the same; The second, as Elected by Authority of Parliament upon King Henry's forfeit thereof.

And Henry the Seventh to all his other Titles by ⁴ Marriage, Conquest, and from the House of Lancaster, adds that of the Authority of Parliament.

This Principle makes Authority and Supreme Power inseparable from Actual Regency, or Command, investing him with the Supreme Power, who hath it for the time being; and making him incapable of being the Higher Power, who is out of Possession, whilst he so continues; which seems clear contrary to the decision of the Holy Scriptures; for though all Israel chose Absalom to be their King, and anointed him over them, though he had; for the time, the Kingdom in possession; and David fled out of the Land, leaving no Governor behind him; yet the Power was in David, he was, even then, the Supreme Governor and Higher Power, to whom Subjection was due: So he was also when all Israel followed Sheba; And though Athaliah possessed the Kingdom of Judah six years, Joash was the true King; and so, the Power ordained of God.

1. This Assertion meddles not with the Right to, but only with the Exercise of the Supreme Authority. Now it is plain to Common sense and experience, that a King out of Possession, whilst he so continues, cannot do any thing belonging to the Higher Power to do; nor is he such an Higher Power as St. Paul represents; for he doth not actually bear the Sword of Justice; he doth not march continually for that very thing; he makes no Judges or Justices of Peace; there are none Commissionated by him for the punishment of evil-doers,

¹ Pag. 127.

Non tam jure hereditario quam unanimi assensu procerum & Magnarum, Ed. Franc.

1602. p. 95.

² Dan. p. 217.

Cui electioni consensit populus universus.

id. p. 126.

³ Trussell,

p. 179.

⁴ Lord Bac.

Hist. of H. 7.

p. 12.

n. 19.

Obj. 5.

2 Sam. xix. 10.

2 Sam. xx. 2.

2 Chr. xxij. 12.

Ans.

where, or for the praise of them that do well: He cannot be a terror unto evil works, or a Rewarder of the good done in that Kingdom in which he hath lost all Power: So that if it be necessary that we should always have a King under whom Justice should be executed, and the Laws be maintained; and he that is out of Possession, for the time being, cannot be that King; it plainly seems to follow, that for the said time he cannot be the Minister of God to us for Good, intended by St. Paul.

Again, it is as plain that the King in quiet possession, for the time being, actually doth or may perform all these particulars, and so, in reference to them all, may be the Minister of God to us for Good: And why then may he not be deem'd the Ordinance of God for the time being? Or why may not those Laws which make him the Supreme Power, and the Executor of these Offices for the time being, be also said to render him the Ordinance of God for the time being?

Ans. 2.

The Instances produced from the Old Testament have nothing in them parallel to our case, or opposite to our Hypothesis; as will be evident, if we consider that the Possession pleaded for, as being that which creates a Right to our Allegiance for the time being, and renders any Prince the Ordinance of God for the said time, is, *Full and quiet Possession of Kingly Government, without the Contest of any opposite Prince in the said Nation; for he who is not King, can never be our Sovereign Lord the King.*

Secondly, Possession given and received by the usual method, *viz.* The Consent of all the Representatives of the People Governed, and the Coronation of the Person Governing, with the usual engagements to the Governed. Which Coronation, how unnecessary soever it may be to a Prince who hath an Hereditary Title to the Crown, must necessarily be needful to make a King, who is not so by Birth-right, our Sovereign Lord the King for the time being.

For want of these two things, though Oliver had engrossed the whole Government, yet was he still a meer Usurper, and no legal Governor; and therefore no Allegiance could, by our Laws, be due unto him, he being no King, much less a

King

King chosen by the House of Lords, and Crowned in the usual manner. And by the enjoyment of these things it was that King Stephen, John, and the three Henrys, though deficient in Title by Birth-right, were notwithstanding, in their respective times, our Kings, and so the Ordinance of God for the said time. This being premised, the impertinency of all the instances produced, will easily appear. For, thus it is
 1^o As for Absalom, he never had any quiet possession of the Kingdom, nor did ever David flee out of the Land; for when the Battel was fought, he was in Mahanaim, a City of Refuge, and a Sacerdotal City; He had with him an Army of his own Subjects able to cope with Absalom, besides those who in reality were for David, though they pretended to follow Absalom.

2^{dly}, Sheba was never Anointed, or placed on the Throne; he never had Possession, or any deliberate consent of the ten Tribes; for he was presently pursued, not only by the Men of Judah, but of Israel also.

2 Sam. xx. 14.

3^{dly}, That Athaliah ever ruled by the consent and approbation of the People of Judah, is not evident from the Sacred Records; perhaps she did it only by meer force and violence, because the house of Abaziah had no power to keep still the Kingdom; or because they knew of none of the Seed-Royal that survived.

2 Chr. xxij 9.
xxij. 3.

Moreover, in all these instances there was an express Law or Declaration of the Will of God against all these pretenders. For Absalom and Sheba rebelled against that David whom the Lord had expressly chosen to sit upon his Throne, and Israel his Inheritance; Athaliah was excluded by that

Pf. lxxviii. 71.

Declaration, Promise, Oath of God, whereby he had engaged that David's Kingdom should be established for ever, and that there should not want a man to sit upon his Throne. Whence having found a Son of Abaziah, the Priests and People with one voice cry out, The King's Son shall Reign, as the Lord hath said of the Sons of David. Now though 'tis granted that no

PC. lxxix. 33.

34. 35.

2 Sam. vij. 16.

2 Chr. xxij. 3.

man can be God's Ordinance against his own immediate and express Appointment of another individual person so to be; this hinders not, but where there is a Law to make it so, where the same ways are used which convey a good Title, and where the exercise of the Government is conveyed by them.

them whom God hath intrusted with the designation of the *Individual Governor*; that *Governor* may exercise the Supreme Power for the time being, even when the Right is in another, or may at least be deemed God's Ordinance in so doing.

Obj. For whereas it is said that *Civil Magistracy* is by the Law of Nature; but he that is only King *de facto*, and so is King in prejudice to, and violation of anothers Right, cannot be a *Magistrate* by the Law of Nature, but against it; and so his exercise of that *Authority* is contrary to the Law of Nature.

Repl. I Answer, that *Magistracy* is only by the Law of Nature, because some Government is so; not because this *Individual Governor* is so. If therefore Government may equally proceed under a King *de facto*, as *de jure*; they may be equally by the Law of Nature, because those Acts of Government, viz. the punishing Offenders, the protecting of the Innocent, and whatsoever else is of the Law of Nature; because essential to Government which is so, may equally be performed by both.

For a Conclusion of this Answer, and this Section with it, it may deserve to be considered, That in these and all other cases of such *Popular Elections*, and *Revolts* left on Record in the *Old Testament*, we find not any person punished afterwards as Rebels for siding with the opposite Party against their Rightful King; None that followed *Adonijah*, and proclaimed him King; none of the ten Tribes who Anointed *Abalom*, or followed after *Sheba*; none who submitted to *Athaliah*. To which add a like Observation out of *Daniel's History*, viz. It is worthy the Note, that we find no execution of blood, except in open battel, in all these combustions; nor any Nobleman to die on a Scaffold, either in this King's Reign, or any other, since *William the First*, which is now almost Three hundred years.

In the Life of
Hen. 3. p. 181.

S E C T. III.

NOW as the strength of this Argument seems to me greater than is that of many others which are produced in this Cause, so are there many singular advantages which it hath above them. For instance :

First, Whereas, 'tis said, That we cannot take this Oath upon the Grounds which commonly are offered to move us so to do, without condemning the Doctrine of *Non-resistance*, allowing Subjects, in some cases, a Power to Depose their Prince; asserting, that our Allegiance to him may cease even whilst he doth continue to Govern, or to sway the Sceptre; and so we cannot, upon those Motives, comply with the Act enjoining us to take it, without condemning our ancient and avowed Doctrines, our Subscriptions to our *Homilies* and *Canons*, if not the Doctrine of the *Ancient Church*, and that which once was counted the Glory of the *Church of England*; and consequently we cannot do it on those Principles, without the scandal of Hypocrisy and Mutability; and so of being *Ecclesiastical Weathercocks*, that turn with every wind that blows; and Men of such flexible Consciences, as will permit us to swear backwards and forwards, or any ways for our interest; which scandal would cause our Persons to be despised, and our Doctrine not to be regarded. Whereas, I say, some of the other Grounds of taking the Oath of Fealty and Allegiance to King *William* seem to subject us to these and many other inconveniencies, this way entirely avoids them all. For,

1. We may still honestly declare, as do our *Statutes*, our *Canons*, and our *Convocations*, That the King's Highness is the only Supreme Governor of this Realm, and of all other his Dominions and Countries; That the Kingly Authority within his Dominions and Countries is immediately, and after God, Chief and Supreme; and that all Subjects by divine Law stand bound to yield all Faith and Obedience to it above all Earthly Power whatsoever. For this Doctrine doth not in the least diminish any Privileges,

leges, or meddle with any Prerogatives of our Sovereign Lord the King, but only tells us who, for the time being, is that Sovereign Lord to whom these Prerogatives belong.

n. 3. 2. We may still honestly declare, That it is not lawful
 Stat. Car. 2. upon any pretence whatsoever to take up Arms against the King;
 A. 14. cap. 2. And that by the undoubted fundamental Laws of this Kingdom,
 12. Car. 2. neither the Peers of this Realm, nor the Commons, nor both toge-
 cap. 10. ther in Parliament, nor the People collectively or representatively,
 nor any other persons whatsoever had, have, hath, or ought to have
 any coercive Power over the Kings of this Realm. And with our
 A. D. 1640. Convocation still assert, That for Subjects to bear Arms a-
 Can. 1. gainst their King, offensive or defensive, upon any pretence what-
 soever, is at the least to resist the Powers which are ordained of
 God. We may still subscribe these Doctrines of our Homi-
 lies as wholesome and godly Doctrines, and Doctrines to be embrac-
 ed by all men; That it is not lawful for Subjects and Inferiors
 2d Par. of the in any case to resist and stand against Superior Powers; that Christ
 Serm. of Obed. hath taught us plainly, that even the wicked Rulers have their
 P. 72. Power and Authority from God; and therefore it is not lawful
 for their Subjects to withstand them, Although they do abuse
 their Power; That if they would command us to do any
 thing contrary to God's Commandments, in that case we may not
 P. 74, 75. in any wise withstand them violently, or rebel against Rulers, or
 make any Insurrection, Sedition or Tumults, either by force of Arms
 or otherwise, Against the Anointed of the Lord, or any
 of his Officers, but we must in such case patiently suffer all
 wrongs and injuries, referring the Judgment of our Cause
 only to God. And that though Multitudes, not only of the Rude
 and Rascal Commons, but sometimes also Men of great Wit, No-
 bility, and Authority, have moved Rebellions against their lawful
 Princes (whereas true Nobility should most abhor such villainies,) though they should pretend sundry Causes; as the Redress of the
 Common-wealth (which Rebellion, of all other mischiefs, doth most
 destroy,) or Reformation of Religion (whereas Rebellion is most of
 all against true Religion,) yet were the multitude of the Rebels ne-
 ver so great, the Captains never so noble, politic, and witty, the
 pretences feigned to be never so good and holy; yet the speedy over-
 throw of all Rebels, of what number, state, or condition soever
 they were, or what colour and cause soever they pretend, is, and
 ever.

Item. of Rebel.
 Par. 2. p. 301.

ever hath been such, that God thereby doth shew, that he alloweth neither the dignity of any person, nor the multitude of any people, nor the weight of any cause as sufficient, for the which Subjects may move Rebellion against their Prince. For this Doctrine only adds to these Particulars this, That the King Regnant in possession is the King whom we may not resist in any case.

3. We are not obliged for the justification of our selves, and of our Doctrine, to appeal from the *Homilies* themselves, to those who composed or subscribed them, to prove their Actions towards others, and the Sayings of one or two of them elsewhere, were inconsistent with the plain import of the words which they subscribed and taught as good and wholesome Doctrine, when it served to defend the Protestants against the Insurrections of the *Romanists*, the chief Adversaries of that Doctrine which *England* knew of in those times; or to insinuate, to their disparagement, that they held this to be good Doctrine, when it was useful to secure them against the *Romanists*; but that the Doctrine of the Lawfulness of Resistance was as good when it was useful to preserve the Protestants in *England*, or beyond the Seas, against the *Romanists*: But can fairly account for that assistance which they gave to their oppressed Brethren from the difference betwixt the constitution of their Government, and ours; this being one of the chief Laws by which the liberty of the *Netherlands* was long maintained and justified.

n. 4.

If any Prince hath disturbed the State of the Republick either by violence, wrong dealing, or treachery, then all the States and Burghers may deny him Obedience, and shall be free, and discharged of their Oaths; they shall appoint a Chief in his place, until he be reduced to a better Mind, and more easie Government. From the Observation of Dr. Hammond out of Bodinus, That in France, Spain, England and Scotland, Reges sine controversia jura Majestatis habent per se: singulis civibus, nec universis fas est summi principis vitam, famam aut fortunas in discrimen vocare, sive vi, sive judicio constituto id fiat; Their Kings have all the Rights of Majesty within themselves; and 'tis not lawful for any of, or all their Subjects to bring their Lives,

Oration of the Lawfulness of the Netherlandish War, p. 14.

L. 2. de Rep. c. 5.

Divin. Dial.
par. 2. p. 81.

Fame, or Fortunes into jeopardy, either by force, or way of justice. But as for the Emperor of Germany, Charles the Fifth, Tyrannide cives ad Rempublicam oppressit, cum jura Majestatis non haberet; He, by his Tyranny over his Subjects, when he had not the Rights of Majesty, forced them to resolve themselves into a

* Lutherus semper docuerat, Magistratui non esse resistendum, & extabat ejus de hac re libellus; cum autem in hac deliberatione periti juris docerent legibus esse permissum resistere nonnunquam, & nunc in eum casum de quo leges inter alia mentionem faciant, rem esse deductam ostenderent, Lutherus ingenuè profitetur se nescivisse hoc licere. *Sleid. Comment. l. 8. p. 195.*

Mr. J. p. 73.

Serm. of Obed.

Par. 2. p. 72.

of Reb. p. 277.

pag. 74, 75.

Hom. of Rebel.

p. 287, 288.

*Common-wealth. And from that of Dr. More, That * Luther would never assent to the Confederacy of defensive Wars at Smalcald, till he was thoroughly instructed by the learned in the Law touching the Constitution of the Empire of Germany, that by the Magna Charta of that Empire the Princes of the Empire are invested with such Rights, as if they be violated by the Emperor; it is lawful for them to take Arms and resist, Sine Rebellionis, & infidelitatis crimine, Without the Crime of Rebellion and Unfaithfulness; and that the Emperor had violated those Rights: Much less are we con-*

strained to fly to such Assertions as these, viz. The Homilies of Obedience do no where teach Submission to lawless Violence, but only to lawful Authority; and the Homilies against Rebellion speak not one word of submitting to unauthoritative or lawless Violence. Hence it must follow, that Princes have lawful Authority to be sharp and rigorous, and wrong doers; to abuse their power; to do all wrongs and injuries to them who will not obey them against God's Commandments; to be mortal Enemies, seeking the Lives of their Subjects; to be naughty, cruel Princes; Princes that be to their good Subjects mortal Enemies; Princes that are hurtful, or like to be hurtful to the Common-wealth: For whosoever reads those Homilies honestly and carefully, will find in them almost as many Passages as Pages requiring Obedience to such Princes.

n. 5.
Bis. Morton's
discovery of the
Rom. Doctrine
in the Case of
Conspiracy and
Rebellion, p. 9,
15, 19, 37.

4. We may still with our Forefathers condemn those Romish Doctrines which ascribe unto the Pope a power of curbing and deposing Princes, in case of Heresie, perverting of Faith, and persecution of their Catholick Subjects, which pronounce it lawful for Catholicks to break Faith with Hereticks; to do evil that good may come; to use fraud, falsehood, and injustice, treachery, and dissimulation, for the benefit

of

of holy Church; we may, as they have done before us, condemn those Principles as Rebellious, which set up a Democratical or Monarchical Power of People, or of Pope over Princes; which dissolve the Oath of Obedience to Princes; which countenance the violating Faith with men of divers Religions; which allow the Doctrine of forcible Deposing of Princes from their Thrones. I say, We may still do all this without fear of having that of the Apostle retorted on us; *Thou art inexcusable, O Man, whosoever thou art that judgest: for wherein thou judgest another, thou condemnest thyself; for thou that judgest, dost the same things. And thinkest thou this, O Man, that judgest them who do such things, and dost the same, that thou shalt escape the judgment of God.* For we by taking of the Oath of Fidelity and Allegiance to King William and Queen Mary upon this Principle, approve of no Democratical Power over our Sovereign Lord the King: No forcible deposing of Princes from their Thrones; but, without farther enquiry after their Right, if we find them settled by the Nations Representatives in quiet Possession of the Throne, give them Faith, and that Allegiance which our Laws have made due to every King in the Possession of the Realm. And lastly, we allow of no other Absolution from our former Oaths than that which Casuists of all Perswasions do admit of; viz. *By the Cessation of the matter of our Oath;* King James now ceasing to be King in Possession, and so in the Law Sence, to be our King.

Rom. ij. 1, 3.

shly. We may also retain our old Sence and Exposition of St. Paul and Peter, viz. That the present Powers which by the Law are such, be they such as duly use, or do abuse the Power committed to them; such as, according to their Duty, are the Ministers of God for good: Or, such as prove eventually the Encouragers of evil Doers, are still the Ordinance of God; and therefore he that doth resist them shall receive to himself Damnation, and are not by our Principles obliged to restrain their words unto such Princes as are in Fact as well as Duty, the Ministers of God for good; but only to such Princes, as, by the Tenor of our Law, become our Sovereign Lords, however they demean themselves in the Exercise of the Government; and so

n. 6.

we

we are not concerned in these Objections against the other Interpretation.

1. That it rather seems to make the Discourse of these *Apostles* an Exemption from Subjection and Obedience to the then present Powers, and an allowance to them, than any Obligation to be subject and obedient to them, they being not in *Fact* as well as *Duty* the *Ministers of God for good*; but most unnaturally and barbarously Cruel, of a most savage, bloody Temper, as is recorded in the *Roman Histories* touching *Tiberius, Claudius, Caligula and Nero*; or if such persons wereto be obeyed without Resistance, as being the *Ministers of God for good*, who then may be resisted for not being so?

2. It plainly seems to lay upon the Blessed *Apostles* the imputation of Dissimulation, and acting not according to that Simplicity and Plainness as might have reasonably been expected from the Dispensers of the Gospel; for without any limitation or exception, they require every *Christian Soul* to be subject to the *Higher Powers for Conscience sake*, and, upon pain of Damnation, never to resist them: They declared to the *Heathen World*, That *Christianity* required all its Professors, how ill soever they were treated, how cruelly soever they were persecuted, how wrongfully soever they did suffer from them, to suffer with the greatest patience, and never to take up the Sword for their Defence against them, but after the Example of their Lord, when they thus suffer, not to revile and threaten, and much less to resist their *Persecutors*, but only to commit their Cause to him that judgeth Righteously. Now if, after all these Declarations, they indeed allowed all *Christians* to resist and take up Arms against their *Governors*, when they conceived them guilty of Tyrannical abuse of Power; when they became a terror to good Works, and not to Evil only; when they did not act according to Justice, or established Laws, or for the Good and Welfare of the Kingdom, but the contrary; surely they cannot be excused from a semblance of Deceit, and of imposing on the *Heathen World*.

3. It plainly seems to make them guilty of the Murder of those many *Christians*, who, when they declared themselves

selves * sufficient both for strength and number to resist and overcome their Persecutors, at the same time declared, they durst not do it, because it was forbidden by the *Christian Laws*.

* Vide *Tertull.* Ap. c. 37. ad Scap. c. 5. *Cyp.* Ep. ad Demetr. *Basil.* l. 8. c. 1. 4. *Augs.* de Civ. Dei l. 22. c. 6.

And whereas against our Interpretation of the words it may be objected, n. 7.

First, That it makes wicked Magistrates the Ministers of God to us for good, the Powers ordained of God; yea, that according to it, even *Usurpers*, if they can once obtain quiet Possession, and the consent of the Nobility and of the Commons, must also be the Ordinance of God for the time being.

Obj. 1.

This I confess is true; but then it seemeth to be only that which Scripture, which Antiquity, which Reason, and the Law of this our Nation doth allow and justifie. For of those wicked Emperors forementioned, it is that St. Paul saith, They are the Ministers of God to thee for good; to them it is St. Peter doth require Subjection, as to men sent for the punishment of evil doers, and for the praise of them that do well. And even of the Power of Pilate to condemn our Saviour, Christ doth himself confess, That it was given him from above. And Reason saith the same; for, even under wicked Magistrates Justice is executed, Offenders against the Lives and Lively-hoods of others punished, and Peace preserved; and from their Government it is that we are kept from the Insolencies of Thieves and Robbers, from barbarous Assassinations, and all the miseries of Anarchy. For, take away the Higher Powers, saith St. Chrysostom, and all goes to wreck, neither will City, nor Country, nor Family, nor Assembly, nor ought else stand, the stronger will devour the weaker, and all things will be turned upside down. So that we do in some measure receive that good from the most wicked and depraved Governors, which without Government we could not have. Accordingly the ancient Christians say in General of those Kings who were not very good, at least many of them, in their times, That they are the Ordinance of God, That by his command Kings are Ordained, That they were appointed

Ans.

1 Pet. ij. 14.

Joh. xix. 11.

Chrys. in Rom. Hom 23. Tom. 3. p. 191.

Theoph. ad Autol. l. 1. p. 75.

by God, That they received their Government from above; That the Emperor derives his Government from him from whom he doth receive his breath; That he is the Man whom God chooseth, and therefore must be loved by Christians, who know he is appointed by God, and that he makes them Governors over the Nations. Asbenagoras faith of Aurelius and Commodus, You have received the Kingdom from above. Dionysius of Alexandria, of Valerianus and Gallienus, God hath committed the Kingdom to you. Hosius of Constantius, who laboured might and main to introduce the Arian Heresie into the Church, against those Imperial Laws which had established the Nicene Faith, That God had given to him the Empire. Paulinus of Trier, Lucifer of Calaris, Eusebius of Vercelli, and Dionysius of Millain, That God gave to him the Kingdom. Athanasius, That God by his Word had given the Kingdom to his Servant Constantius. He that gave the Government to Marius, faith St. Austin, gave it to Cæsar; he who gave it to Augustus, gave it also to Nero; he who gave it to the Vespasians most sweet Emperors, gave it also to the most cruel Domitian; and he who gave it to that most Christian Prince Constantine, gave it to Julian the Apostate. Tho he be wicked, abominably wicked; though he commit Ten thousand Evils, and do the worst of mischiefs to us, faith St. Chrysostom, yet he is a King, a Governour, one to whom the Government is committed, and therefore to be revered, and not to be despised for his wickedness, but revered for his Dignity.

n. 8. But yet it may be said, How true soever this may be of an evil King, who hath a lawful Title to his Government, it seems strange and incongruous to assert, That he who is only King *de facto*, and so can only Exercise that Government which doth of Right belong unto another, should be the Ordinance of God; and it is liable to these great Objections and Absurdities.

1st. That which renders a man an Usurper of another Man's Right, without due Title or Admission to the Exercise of that Right, can never render him the Ordinance of God to which I owe Subjection and Allegiance; but that which makes him only King *de facto*, in opposition to a King *de jure*, makes him an Usurper of another Man's

“ Man’s Right, without due Title or Admission to the Exercise of that Right.

2dly. “ The Precept: *Let every Soul be Subject to the Higher Powers* cannot agree to him who is only King *de facto* in opposition to him that is King *de jure*; for this Subjection doth not only signifie a Passive Obedience, or *Non-Resistance*, but an active Execution and Observation of all his lawful Commands, the Contribution of Taxes, to his Support and Maintenance, our Assistance and Endeavours to keep him in his Station by our Arms, Purse; our Counsel and our Prayers; our Love, Reverence and Honour of him: In a word, our Fidelity and Allegiance to him against all others. Now can all this be due to a King *de facto* in opposition to him whose Right it is.

3dly. “ It is Damnation to resist the Power ordained of God in favour of any other person; but can it be Damnation to resist him who is only King *de facto*, in Favour of a King *de jure*, to whom assistance must be due *de jure*? If so, then what just War can be made for the Recovery of his Right? or, why did *Jehoiada* not only Depose, but cause *Athaliah* to be Murthered for the sake of *Joash*?

4thly. “ The Power is the Minister of God, or one Commissionated and Deputed by him, for the same Dependance that a Subordinate Magistrate hath upon his Sovereign for becoming his Minister, the same hath a Sovereign Magistrate upon God for being his Minister; but can any one be Deputed or Commissionated by God to take away another Man’s Right, or wrongfully to detain it?

5thly. “ By this Assertion no King *de facto*, or in quiet possession can be an unjust Possessor, or an unlawful occupant of the Throne; for he that is so in, as to be God’s Ordinance; i. e. Commissionated and Deputed by him to be the Higher Power, must needs be rightly in, and Authorized to execute the Government.

These, I confess, seem to be great Absurdities at the first view, and such as plainly shock the whole Foundation of

n. 9.
Answ.

our Argument ; but yet, I hope, their force may be sufficiently abated by these Considerations following.

1. That some of these Arguments seem with an equal strength to prove, that wicked *Kings* are not, and cannot be the *Higher Powers*, or, the Ordinance of God, as that *Kings* in possession without Right, can never be so.

2. That it is plain to common Sense, and the Experience of Men, that a *King* out of Possession, whilst he is so, exerciseth none of the Characters and Offices ascribed by St. Paul to the *Higher Powers*, and that the King *de facto* doth, or may exercise them all.

3. That he who in our Case is *King Regnant in Possession* is not to be deemed an *Usurper* in the Law Sence and Acceptation of the Word.

4. That by the difference which must be put betwixt him and a meer *Usurper*, all the forementioned Objections may be solved. And,

First, Some of these Arguments seem with an equal strength to prove what most undoubtedly is false, viz. That *Princes* acting wrongfully and injuriously towards their Subjects cannot be the *Higher Powers*; for it is certain they can derive no Power from God, but for the good of Man. They can have no Commission, Title or Authority from him to hurt the Innocent, to pervert Judgment, or to do Evil to his People; they therefore do exert this Power without due Title or Commission from God, they usurp upon the Rights of other Men; for every Subject has a right to Justice, every innocent person to Protection from suffering hurt or violence. They cannot be Commissionated or Deputed by God to do these things; for then they must have Authority from God to do them, and so they must be rightly done: And yet even in these Cases we must suffer patiently, and be thus subject for Conscience towards God, and cannot forcibly resist them without the peril of Damnation, which we only can incur, because we do resist the *Higher Powers*. They therefore in these Actions are at once the Power, and the Abusers of the Power, yea the *Usurpers* of a Power which belongs not to them; and therefore even of the Power of *Pilate* to condemn the blessed *Jesus* our Lord speaks thus:

Joh. xix. 11. *Thou couldst have no Power over me, unless it were given thee from*

from above. And when Peter drew his Sword in the defence of his Innocence against men Commissionated by an *Illegal High Priest*, he saith unto him, *Put up thy Sword into its place, for all that take the Sword shall perish by it.* Moreover, if Subjection signifies active Subjection to their Administration of the Government, if it require our Arms, Purse, Counsels, Prayers, 'tis certain this cannot lawfully be afforded to strengthen and assist them in these Evil Actions; but that, in all these Cases, we may both Counsel, and pray against their Wickedness, and though we may not even then lift up our hands against them, we may hold them down.

Secondly, In Answer to the Fifth Objection in the Second n. 17. Section I have proved, that it is plain to common Sense, that a King out of Possession, whilst he is so, cannot do any thing belonging to the *Higher Powers* to do, and that a King *de facto* in Possession may perform all things of that Nature.

Thirdly, I add, That King William and Queen Mary being King and Queen by the consent of the Nobility and Commons, the Representatives of the Kingdom, cannot be looked upon as meer Usurpers for the Reason given in *Bagot's Case* concerning Henry the Sixth, That he was not to be deemed an Usurper, because the Crown had been entailed on him by Act of Parliament. Which may be proved,

Secondly, From the nature of a meer Usurper or Possessor, viz. "That he is one who is in the place of Power without any Gre. p. 295.
"Call, Consent, or Constitution of the People; or, that he is
"one that is in merely by his own Act: Whereas King William and Queen Mary are not in the place of Power merely by their own Acts, but by the Call, Consent, and Constitution of the Nobility and People.

Thirdly, From the Nature and the Essentials of Government. For what doth constitute it but the Subjection of the governed Party, or the Resignation of themselves, their wills, abilities or powers to the Rule and Arbitration of some other? What Title hath any Conqueror to another Man's Subjects without this? Or what King now in Being can claim a Right unto his Kingdom upon any other Title? What are the motives to Government but the preservation of Peace and Order, and the prevention of Injuries and Wrongs?

Wrongs? When then there is, after mature deliberation had, such an actual Designation of the whole Community, there is Government conveyed in that very way in which it always was, since paternal Government ceased, communicated; and in which alone it can be properly conveyed: And so, there is no Usurpation of it in respect of him who thus receives it, whatever irregularities may be in their Actions who do thus conferr it.

Lastly, I add, That by due observation of the difference which must be put betwixt Usurpers, and our present *King* and *Queen*; and the two Observations made, all the fore-mentioned Objections may be solved. For,

First, As we compared them before with the Case of a *King* injurious to his Subjects, and found them almost as strong against his being the *Higher Power*, so let us again compare them with the Case of a *King* injurious to his fellow *King*, unjustly Invading, and so entirely Conquering his Dominions, and seizing on them for himself. Did not the beginning of this Action constitute him an injurious Person, when he takes upon him the Government thus got? doth he not take away another Man's Right? and must he not then wrongfully detain it? is not the person, thus wrongfully Excluded, *King de jure*? may he not justly wage War for the Recovery of his Right? but yet do not all Persons own that 'tis not only lawful, but even necessary for the People, after such Conquest, to consent to take the *Conqueror* for their *Governor*, to yield Allegiance to him; and that by doing so, they render him the *Higher Power*, and the *Ordinance of God*? And yet all the forementioned Objections are as strong against him, as any other unjust Possessor of the Throne.

Moreover, by a particular consideration of them, it will be evident, that they partly have received a sufficient Answer, and that 'tis easie from the Premises, to give a full Solution to them. To reassume them therefore in their order, it is Objected,

n. 10.

Obj. 1.

“ That which renders a Man an Usurper of another
 “ Man's Right, without due Title or Admission to the
 “ Exercise of that Right, can never render him the *Ordi-*
 “ nance

" nance of God, to which I owe Subjection and Allegiance ;
 " but that which maketh any person King *de facto* only, in
 " opposition to a King *de jure*, maketh him an Usurper of
 " another Man's right without due Title or Admission to the
 " exercise of that Right, *Ergo*.

To this I Answer, That a due Title may be either such, Repl.
 as, according to the strict Rules of Justice bears that name,
 as being obtained by due means, and conferr'd without in-
 justice or injury done to any person ; and so it must be gran-
 ted, that a King *de facto*, or an unjust Conqueror can have
 no due Title against a King *de jure* : Or, 2^{dly}, that may be
 stiled a due Title which is legal, or allowed of by the Law,
 and which is conferr'd with those Formalities of Law, and
 with those usual Ceremonies and Rites which customarily
 are observed in the most Regular Collations of those Titles.
 A Title just, in the first sence, cannot be necessary to ren-
 der a Prince the Ordinance of God, or any other Secular
 and Ecclesiastical person capable of being owned as such ; for
 then none of the Jewish High Priests, in the times of our Sa-
 viour, could have been owned as God's Ordinance, they having
 seldom obtained that Office by due means ; nor having it
 conferr'd upon them without the injury of him, to whom
 by God's direction it belonged for life, viz. The eldest Son
 of the house of Aaron ; for the Procurator of Judea made that
 Office Annual ; it was usually bought and sold : Josephus
 reckons no less than twenty eight of these irregular Advance-
 ments to that Dignity ; and yet St. Paul owns one of these
 very persons as the Ruler of the People : Our Lord owns those
 who were sent by their Authority as men who could not be
 resisted lawfully. The Holy Ghost doth own them as High
 Priests, and even assisted one of the worst of them to prophe-
 sie whilst he held the Office : Nor doth our Lord himself de-
 ny his Right unto that Title. Moreover, those Bishops which
 received their Power and Investiture from those Popes who
 wrested it from Kings, and others who had right to nomi-
 nate, and to elect them, could not, upon this supposition,
 be God's Ordinance, nor as such obeyed in prejudice to the
 Rights of Kings, and these Electors. 3^{dly}, No Conqueror of
 a Rightful King could be God's Ordinance, notwithstanding
 any;

Vide Ham. in.
 Luc. 3. not c.

Ast. xxij. 5.
 Matt. xxvj. 52.
 Joh. xi. 49, 51.

any consent afterwards obtained from the People. *Firstly*, The four great *Monarchies* could not be the Ordinance of God with respect to the greatest part of their Dominions, which they obtained only by the Sword. *Secondly*, Most of the *Roman Emperors* in the *Primitive Times* could not be truly styled God's Ordinance, as being advanced to the *Imperial Throne*, rather by the Arbitrary choice of the *Army*, than the free Antecedent choice of the *Senate*. Then, *lastly*, had we of this Nation no Ordinance of God in being, during the Reigns of *Henry the Fourth, Fifth, and Sixth*, that is, for the space of sixty years, they being accounted, and in one of our Acts of *Parliament* often styled *Kings in Deed*, and not of Right.

1. Edw. 4.

And if a due Title, in the second sense, be sufficient to render a person the Ordinance of God; then, be it supposed, though not granted, that *King William and Queen Mary* are only King and Queen *de facto*, yet may they have a due Title, because they have a legal Title from those Laws which declare the King and Queen, for the time being, to be our Sovereigns within the purview of the Statute. The Government also being conferr'd upon them by consent of the *Nobility and Commons*, representing all the Governed, they being Crowned King and Queen after the usual manner; and so having the Government conferr'd upon them with those Formalities of Law, and with those usual Ceremonies and Rites which customarily are observed in Collating of it.

n. 11.

Obj. 2.

“The Precept; *Let every Soube subject to the Higher Powers*, cannot agree to him who is only King *de facto*; in opposition to him who is King *de jure*; for this Subjection doth not only signifie a passive Obedience, or Non-resistance; but an active Execution and Observation of all his lawful Commands; the Contribution of Taxes to his support and maintenance; our Assistance and Endeavours to keep him in his Station by our Arms; Parle; our Counsel and our Prayers; our Love, Reverence, and Honour of Him: In a word, our Fidelity and Allegiance to Him against all others. Now can all this be due to a King *de facto*, in opposition to him whose Right it is?

1. Our

1. Our Law seems very plainly to require most of this to a King *de facto*, for the time being; as making it our duty, to do him *true and faithful Service and Allegiance*, and that because, for the time being, he is our *Sovereign Lord the King*, and so the *Higher Power*, to which we are to be subject for the time being; and if he may be the *Ordinance of God*, as I have shewed he is, most of the things here said to be included in Subjection, must be due unto him by *St. Paul's Injunction*.

Ans.

2^{dly}, I have shew'd already, that a King out of Possession, while he continues so to be, cannot do any thing required by the Office of the *Higher Power*; he cannot bear the *Sword of Justice*; he can Commission none to *punish evil doers*, or reward the Good; he cannot be the *Minister of God to us for good*: And yet it is on these accounts that *St. Paul* lays a necessity of Subjection on us, *Not only for Wrath, but Conscience sake*; and that he tells us we are to *pay tribute*, because he is *continually attending on these things*.

I have also shew'd, that from a King, *de facto*, in full and peaceable Possession of the Government, we do or may enjoy all these benefits, and in all these particulars; He may be unto us the *Minister of God for good*, and that from Him alone it is we can receive actual Protection, and all the benefits of Government, (if therefore it be necessary that we should always have a King under whom Justice should be executed, and the Laws have their course, it seems as necessary that the King, for the time being, should be received as our King; if Protection doth require Allegiance, and we, for the time being, do receive it only from him, it seems as evident, that for the time being, we should yield it only to Him.) If then the King, *de jure*, out of Possession, can be to no intents and purposes the *Minister of God to us for good*; and the King, *de facto*, may be so to all the said intents and purposes; then may he also be the *Higher Power*, and the *Ordinance of God* for the time being. In a word, the *Lord Chief Justice Coke* expressly saith, That by the Law there is always a King *Instit. par. 3.* in whose name the Laws are to be maintained and executed, otherwise Justice should fail; and if so, then by the Law the King *P. 7.* *Regnant* must be our King, there being no other in whose name.

name the Laws can be maintained and executed, and the failure of Justice be prevented : And if he be the *Higher Power*, he must also be that *Ordinance of God*, for the time being, to which we owe the Duties mentioned in the Objection.

3dly, As for the first of these Duties, *An active execution and observation of all the lawful Commands of the King Regnant for the time being*, it admits no real Ground of Scruple ; for lawful Commands may lawfully be obeyed.

The Contribution of *Taxes* to his support and maintenance, is by St. Paul declared to be due, *De recto*, for this very cause ; that he attends continually upon the Government, and therefore due to him that doth so.

Our Assistance to promote the welfare of the Government we are under, by our Prayers and Counsels, seems plainly to be our duty by virtue of that Command which God gave to his own People, and the continuance of the Reason of it ;

Jer. xxix. 7. *Seek the peace of the City, whither I have caused you to be carried away Captives, and pray unto the Lord for it ; for in the peace thereof you shall have peace ;* and of that Apostolical Injunction,

1 Tim. ij. 1, 2. *That prayers, and supplications, intercessions, and giving of thanks be made for all that are in Authority, or eminent Place.*

As for our endeavours to keep them in their Station by our Arms, it only can be so far our duty as it is lawful so to do : Nor do I find St. Paul inculcating it as any part of our Subjection to the *Higher Powers* ; nor doth our Law, since the Cessation of the Tenure of Knights-Service require it personally of all Subjects. At least we of the Clergy cannot be concerned in it, because we by so many Statutes are exempted from bearing Arms.

And, lastly, as for *bearing Faith and true Allegiance*, you see our Law doth plainly and expressly make it due unto a King *de facto*. And so I cannot see why all these Duties may not, as far as we can be concerned in them, be paid to such a King for the time being.

n. 12.

Obj. 3.

“ It is damnation to resist the Power ordained of God
 “ in favour of any other person ; but can it be damnation
 “ to resist him who is only King *de facto*, in favour of a King
 “ *de jure* ? if so, then what just War can be made for the
 “ Recovery of his Right ? or why did *Jeboiada* not only de-
 “ pose,

pose, but even cause *Athaliah* to be murdered for the
 " sake of *Joash*.

The word which we translate *Damnation*, in the Original is *reſua*, that is *Judgment*. Now, by our Law, Treason may be committed against a King *de facto*, and that is punishable by the Judgment of Death; and if this Treason be an offence against the natural Allegiance due to the King *de facto*, as all Treasons are, and I do thus offend by *ſervyng War against the King for the time being, in this Realm, by being adherent to his Enemies, or giving Aid unto them*, I must be guilty of it by doing this in favour of a King *de jure*. It therefore may be judgment to resist the King *de facto*, in favour of the King *de jure*, i. e. it may be an Offence which, by the Law, will render me obnoxious to judgment. If the King *de jure*, at his return to exercise the Government, may punish me for any Treasonable action done against the King *de facto*, and consequently for resisting such a King in favour of himself, it must be an Offence deserving Judgment, according to our Law, thus to resist the King *de facto*, in favour of the King *de jure*.

Nor doth it follow hence, that the King *de jure*, can make no just War for the Recovery of his Right; for this he may do by the Assistance of his Allies, by Foreign Aids, or by those Subjects who have still adhered to him, or will repair unto him; only they cannot do it who have received Protection, and lived for a time in quiet subjection to another Government. If therefore Men will act up to their principle, That *their Allegiance is still due to King James*, they must immediately go out of the Realm, and repair thither where they alone can pay it to him. If they think it unlawful to own any Allegiance due to King *William*, they must expect no Protection, seek for no Justice from him, pay no Taxes to him; for if they repair to him, as the *Avenger* of any evil done to them, or as the *Minister of Justice*; if they pay him any Taxes, they thereby virtually own him as the *Higher Power*, seeing these things are only due unto him, and can be expected from him, because he is the *Higher Power*, and you are his *Subjects*.

§. 2. n. 17. To the Case of *Ahabiah* I have Answered before; and shall now only add, That if she obtained any consent from the People; it was by reason of their ignorance that she had any Competitor, or that any of the Sons of *Abaziah* were alive; and that she could not have the Throne of *Judah* whilst any of the *Seed-Royal* lived, by reason of God's manifest declaration to the contrary; and therefore when the King's Son was discovered, *the Priests, the Levites, and the Chief of Israel* do presently cry out, *Behold the King's Son shall Reign, as the Lord hath said of the house of David*: Here therefore was the immediate Declaration, the Promise, and the Oath of God against her; which whosoever in our case can shew, will make this instance pertinent. Moreover, she who gained consent only on supposition, that there was none of that *Seed of David* left, of whom God had expressly said, That they should sit upon the Throne, could only be supposed to have their consent so long as no such Seed appeared.

2 Chr. xxij. 3.

n. 13. " The Power is the Minister of God, or one Commission-
Obj. 4. " nated and Deputed by him, for the same dependance
" that a Subordinate Magistrate hath upon his Sovereign
" for becoming his Minister; the same hath a Sovereign
" Prince upon God for being his Minister: But can
" any one be Deputed or Commissionated by God to
" take away another Man's right, or wrongfully to de-
" tain it?

Ausn. That the *Supreme Magistrate* is Commissionated by God to be his Minister, as well as the Inferior Officer is to be the Prince's Minister, is true; but there is a signal difference as to the manner of conveying this Commission; for the Inferior Officer is personally named by some of his *Superiors*, and acts by virtue of a particular Grant or Instrument of his *Superior* conveying that Office to him, or imposing it upon him by name; whereas since the times of the *Jewish Kings*, no man can pretend any such Title to be the *Supreme Power* in any Kingdom; God never personally naming
now,

now, or immediately declaring the Person who is to pre-
side in any Kingdom, but leaving this to be done by the
Governed, according to Prudential Rules, or according to
the Constitutions they have made among themselves; here
therefore may be great fault committed by the Governed,
in varying from the form of Government prescribed by
their Constitutions, or from the Person they by those Con-
stitutions were obliged to admit unto the Government;
and yet the Person they do pitch upon to Govern after
such a form may be *the Ordinance of God*, as being pitched
upon by them to whom his Providence thought fit to
leave the management of this affair; and though their
irregular Proceedings can justifie no man in taking or de-
taining what is another Man's right, especially if he in
conscience be convinced that it is so; yet may it render
him *the Ordinance of God* who exerciseth the Government
thus devolved upon him, because he is the Minister of
God by the same way and method by which the justest
Title is conferr'd.

" By this Assertion no King, *de facto*, thus put in quiet
possession of the Government, can be an unjust Posses- n. 14.
" for, or an unlawful Occupant of the Throne; for he Obj. 5.
" that is so in as to be God's Ordinance, that is Com-
" missionated and Deputed by him to be the Higher Power,
" must needs be rightly in, and Authorized to exercise
" the Government.

He that is so God's Ordinance as to be immediately *Ans.*
Deputed by him, as *Saul, David, Solomon*, can never be
an unjust Possessor; but he who is only the Ordinance of
God mediately, and by virtue of such and such Acts done
by the Governed to make him so, may be an unjust Pos-
sessor as oft as they conferr the Government upon him in
opposition to another, to whom in justice, or by the con-
stitution of their Government they should have given it.

Again, He may be stiled an unlawful Occupant of the
Throne, with reference to them, who, against the Tenor

of their Laws and Constitutions, did conferr it on him; but cannot be stiled an unlawful Occupant, as that importeth one, who by Law cannot exercise the Government conferred on him; because the Law doth make him for the time being our *Sovereign*, and one to whom true Duty and Service of Allegiance is to be tendered by his Subjects. Thus he, who by an unjust Decree of a corrupt Judge, or the false Testimony of a Witness, not then discerned so to be, gets the Possession of, and becomes Lord of a Manor, is an unjust Possessor, but not an unlawful Occupant, because he hath obtained it by form of Law; and the Tenants are obliged, whilst he continues in Possession, to swear Homage to him, as there is occasion, as much as they did formerly to him who justly was possessed of it.

6thly. Moreover, we are not by our Principles obliged to condemn the *ancient Christians*, not only as Fools and self-Murderers, but introducers of a *mischievous Turkish Doctrine*, even the *slavish Doctrine of the Bow-string*; but may, with

Δι' αὐτὸς ὡς ἐκείνῃ ἀναμειβόμενοι
αὐτοῖς ἐπὶ τῶνδε, μὴ δυνάμεθα ἀνα-
σταθῆναι οἱ τοὶ ἡμεῖς διὰ τούτων. Contr.
Cels. l. 3. p. 115.

Nos enim nos ipsos tanquam
oves tradidimus ad occisionem,
ut qui didicerimus esse subjecti
omnibus potestatibus. Apud
Usher, *Power of the Prince*, p.
223.

Οὐδὲν σέσωκεν ἔργον ἐνδεσφύ-
χουσαντων. Ibid.

Circa Majestatem Imperatoris
defamamur, sed nunquam Al-
biniani, vel Nigriani vel Cassiani
inveniri potuerunt Christiani. Ad
Scap. c. 2. Erant de Romanis non
Christiani, Apol. c. 30.

Origens, continue to assert, That the mild
Laws of Christianity are such by which they are
obliged to suffer themselves to be slain, rather
than to avenge themselves upon their Persecutors,
of what kind soever; and may believe the *Per-
sian Martyrs*, to be never the worse *Christi-
ans*, because they said, *We have given up
our selves as Sheep to the slaughter, having learnt
to be subject to every Ordinance of Man.* We
may still judge it was for the Praise, and
not the Condemnation of *Christians*, that
Origen declared, That, after all the barba-
rous and unjust Severities the *Emperors* in-
flicted on them, they could give no example
of any *Sedition of the Christians*. That *Ter-
tullian's* Apology for them runs thus, *No
Christian was ever found a Rebel: As for Pe-
scenninus Niger, and Clodius Albinus who
rebelled against Severus; and Cassius, who con-
spired against Verus; they were Romans, but*

none

none of them Christians. Though the *Historian* tells us, That the Emperor *Severus* was a Man truly answering his Name, and of infinite Cruelty, not only to the meaner sort, but to the Senators. That Saint *Austin* said, That the City of Christ, though it had Armies of great People appertaining to it, did not fight for their temporal safety against their cruel Persecutors, but rather, that it might obtain eternal happiness, made no resistance at all. And we may still think it no disparagement to the Christians, that they accounted the *Theban* Legion true Martyrs, and composed Hymns to be sung in praise of them Day and Night. Nor need we have a worse Opinion of that which anciently was stiled, *Θεία ἀρχή, καὶ παντοκράτωρ Θεὸς, καὶ σωτήρ καὶ ἐκκλησιάρχης*, The Divine Aid, the whole Armor of God, the Host of Piety. And by Saint *Bernard* is called, The Weapons with which alone it is lawful for us to fight against our Prince; because this hath been lately rendered the mischievous Cant of Prayers and Tears; for our Principles oblige us to resist none, to be patient under, and submissive to all Higher Powers for the Lord's sake.

7thly. Again, our Principles give no encouragement to any to rebel against, or call their Princes to an account for Arbitrary Government, or violation of their Coronation Oaths; but, whatsoever they may be to us, require our Subjection and Allegiance to them, and our sincere endeavours, by all lawful means (though not by being active to the Ruine of the Church and State) whilst they are in possession of the Government to keep them there. For as the Statute of *Henry the Seventh* saith, That no person or persons shall take any benefit or advantage by this Act, which shall hereafter decline from his, or their said Allegiance: So can they, from our Doctrine, have no advantage so to do.

Æl. Spartian. in Vita Severi p. 347. 349. 353.

Neque tunc Civitas Christi—quamvis haberet magnorum agmina populorum adversus impios persecutores suos pro temporali salute pugnavit, sed potius, ut obtineret æternam, non repugnavit. *De Civ. Dei* l. 22. c. 6.

Orig. Contr. Cels. l. 8. p. 426, 427.

Orig. Contr. Cels. l. 8. p. 426, 427.

Pugnabimus usque ad mortem, si ita oportuerit, pro matre nostra ARMIS QUIBUS LICET, non scutis & gladiis, sed precibus, fletibusque ad Deum. *Ep.* 221. ad Ludovic. Regem.

Lastly,

Lastly, Our Principles do not concern themselves either with the supposed Title of the *Prince of Wales*, or the supposed defect of Title in King *William*; for do but grant what is plain matter of Fact, that neither King *James*, nor the *Prince of Wales* are in Possession of the *Crown of England*, and that King *William* and Queen *Mary* are in Possession of it by the consent and approbation of the *Parliament*, and *Faith and true Allegiance* for the time being, must, by our Principles, be due unto the latter, whatsoever Right or Title may be due unto the former.

FINIS.

ERRATA.

Page 18: line 16. for *displeased* read *displaced*: p. 31. l. 32. dele of: p. 46. l. 5. add *resist*.

*Books lately Printed for Awnsham Churchill at
the Black Swan at Amen-Corner.*

THE Late Lord *Ruffel's* Case, with Observations upon it. Written by the Right Honourable *Henry Lord De la Mere.* fol.

An Historical Account of Making the *Penal Laws* by the *Papists* against the *Protestants*, and by the *Protestants* against the *Papists*. Wherein the true *Ground* and *Reason* of Making the *Laws* is given, the *Papists* most barbarous Usage of the *Protestants* here in *England*, under a Colour of *Law*, set forth; and the *Reformation* Vindicated from the Imputation of being *Cruel* and *Bloody*, unjustly cast upon it by those of the *Romish Communion*. By *Samuel Blackerby*, Barrister of *Grays-Inn.* fol.

Obedience Due to the Present King, notwithstanding our Oaths to the Former. Written by a Divine of the *Church of England.* 4°

A modest Enquiry, Whether *St. Peter* were ever at *Rome*, and Bishop of that *Church*? wherein, I. The Arguments of Cardinal *Bellarmino* and others, for the Affirmative, are considered. II. Some Considerations taken Notice of, that render the Negative highly Probable. 4°

The Spirit of *France*, and the *Politick Maxims* of *Lewis XIV.* laid open to the World. 4°

Memorials of the Method and Manner of Proceedings in Parliament in Passing Bills. Together with several Rules and Customs, which by long and constant Practice have obtained the Name of *Orders of the House*. Gathered by Observation, and out of the Journal Books, from the time of *Edward VI.* 8°

Dr. Burnet's Tracts in Two Volumes. Vol. I. Containing, 1. His Travels into *Switzerland, Italy* and *Germany*; with an Appendix. 2. Animadversions on the Reflections upon the Travels. 3. Three Letters of the *Quietists, Inquisition*, and State of *Italy.* Vol. II. 4. His Translations of *Lactantius* of the Death of Persecutors. 5. His Answers to Mr. *Varillas*: In Three Parts. 12°

A Collection of Texts of Scripture, with short Notes upon them. And some other Observations against the Principal *Papish Errors.* 12° The

Books lately Printed for A. Churchill.

The Fallibility of the *Roman Church*, Demonstrated from the manifest Error of the Second *Nicene* and *Trent* Councils, which Assert, That the Veneration and Honorary Worship of Images, is a Tradition Primitive and Apostolical. 4°

A Demonstration that the Church of Rome, and her Councils have Erred; by shewing, That the Councils of *Constantine*, *Basil*, and *Trent*, have, in all their Decrees touching Communion in one Kind, contradicted the Received Doctrine of the Church of Christ: with an Appendix, in Answer to the XXI. Chapter of the Author of *A Papist Misrepresented*, and Represented. 4°

A Treatise of Traditions, Part I. Wherein it is proved, That we have Evidence sufficient from Tradition; 1. That the Scriptures are the Word of God. 2. That the Church of England owns the true Canon of the Books of the Old Testament. 3. That the Copies of the Scripture have not been corrupted. 4. That the Romanists have no such Evidence for their Traditions. 5. That the Testimony of the present Church of Rome can be no sure Evidence of Apostolical Tradition. 6. What Traditions may securely be relied upon, and what not. 4°

A Treatise of Traditions, Part II. Shewing the Novelty of the pretended Traditions of the Church of Rome; as being, 1. Not mentioned by the Ancients of their Discourses of Traditions Apostolical, truly so called, or so esteemed by them. Nor, 2. In their Avowed Rule, or Symbol of Faith. Nor, 3. In the Instructions given to the Clergy, concerning all those things they were to teach the People. Nor, 4. In the Examination of a Bishop at his Ordination. Nor, 5. In the Ancient Treatises designed to instruct Christians in all the Articles of their Faith. 6. From the Confessions of Romish Doctors: with an Answer to the Arguments of Mr. *Mumford* for Traditions; And a Demonstration, That the Heathens made the same Plea from Tradition as the Romanists do; and that the Answer of the Fathers to it doth fully justify the Protestants. 4°

All these four Books Written by the Reverend D. *Whitby*, D. D.

An Exhortation to Charity, (and a Word of Comfort) to the Irish Protestants: Being a Sermon Preached at *Steeple* in *Dorsetshire*, upon occasion of the Collection for Relief of the Poor Protestants in this Kingdom, lately fled from *Ireland*: By *Samuel Bold*, Rector of *Steeple*. 4°

T H E E N D.

